

STATE OF NEW YORK

8599

2025-2026 Regular Sessions

IN ASSEMBLY

May 22, 2025

Introduced by M. of A. NORBER -- read once and referred to the Committee on Transportation

AN ACT to establish an oral fluid task force to study and make recommendations on best practices for the testing of oral fluid to determine impairment due to drug intoxication while operating a motor vehicle in the state of New York; and to amend the vehicle and traffic law, the criminal procedure law, the environmental conservation law, the navigation law, the parks, recreation and historic preservation law and the penal law, in relation to the testing of oral fluids

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Oral fluid task force. 1. (a) A task force is hereby estab-
2 lished to study and make recommendations on best practices for the test-
3 ing of oral fluid to determine impairment due to drug intoxication while
4 operating a motor vehicle in the state of New York. For the purposes of
5 this task force, "testing of oral fluid" or "oral fluid test" shall mean
6 a standardized preliminary saliva analysis test validated by the
7 National Highway Traffic Safety Administration for the detection of
8 cannabis or other drugs. A field sobriety test shall be considered an
9 oral fluid test if such test is administered in substantial compliance
10 with the standards prescribed by the National Highway Traffic Safety
11 Administration.
12 (b) The task force shall study:
13 (i) the frequency of traffic stops where impairment due to drug intox-
14 ication is a central or contributing factor for the stop;
15 (ii) current law enforcement methodologies to determine drug intoxica-
16 tion, including but not limited to any devices that have the ability to
17 determine the level of impairment and type of drug consumed;
18 (iii) the feasibility of expanding drug recognition expert training
19 for all law enforcement agencies and personnel involved in traffic
20 enforcement in the state of New York; and

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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(iv) the feasibility of mandating drug recognition expert training for all law enforcement agencies and personnel involved in traffic enforcement in the state of New York.

(c) No later than one year after the effective date of this section, the task force shall report its findings to the governor, the temporary president of the senate, the minority leader of the senate, the speaker of the assembly, and the minority leader of the assembly.

2. (a) The task force shall be comprised of the commissioner of the department of motor vehicles or their designee, the commissioner of the department of transportation or their designee, the commissioner of the department of health or their designee, the executive director of the office of cannabis management or their designee, the superintendent of the state police or their designee, the chairperson of the New York state STOP-DWI Foundation or their designee, and the commissioner of the division of criminal justice services or their designee.

(b) One member of the task force shall serve as chairperson of the task force.

(c) The members of the task force shall receive no compensation for their services, but shall be allowed their actual and necessary expenses incurred in the performance of their services.

(d) All departments, divisions, bureaus, commissions, districts or agencies of the state or any political subdivisions thereof shall, at the request of the chairperson, or head of such entity provide the task force with such staff, facilities, assistance and data as will enable the task force to carry out its powers and duties.

§ 2. Section 114-a of the vehicle and traffic law, as amended by chapter 92 of the laws of 2021, is amended to read as follows:

§ 114-a. Drug. The term "drug" when used in this chapter, means and includes any substance listed in section thirty-three hundred six of the public health law and cannabis and concentrated cannabis as defined in section 222.00 of the penal law and any substance or combination of substances that impair physical or mental abilities to any extent.

§ 3. The vehicle and traffic law is amended by adding two new sections 119-c and 120-a to read as follows:

§ 119-c. Impaired. Impairment is reached when a driver has consumed or ingested a substance or combination of substances to the extent that the driver has impaired, to any extent, the physical and/or mental abilities which a driver is expected to possess in order to operate a vehicle as a reasonable and prudent person.

§ 120-a. Intoxication. Intoxication is a greater degree of impairment which is reached when a driver has consumed or ingested a substance or combination of substances to the extent that the driver is incapable, to a substantial extent, of employing the physical and/or mental abilities which a driver is expected to possess in order to operate a vehicle as a reasonable and prudent person.

§ 4. Subdivision 2, paragraph (a) of subdivision 2-a, and subdivisions 5 and 6 of section 1192 of the vehicle and traffic law, subdivision 2 as amended by chapter 3 of the laws of 2002, paragraph (a) of subdivision 2-a as amended by chapter 496 of the laws of 2009, and subdivisions 5 and 6 as amended by chapter 236 of the laws of 2003, are amended to read as follows:

2. Driving while intoxicated; per se. No person shall operate a motor vehicle while such person has .08 of one per centum or more by weight of alcohol in the person's blood or is impaired by the ingestion of a drug or drugs as shown by chemical analysis of such person's blood, breath, urine or ~~[saliva]~~ oral fluid, or by an evaluation conducted by a certi-

1 fied drug recognition expert, or any portion thereof, made pursuant to
2 the provisions of section eleven hundred ninety-four of this article.

3 (a) Per se. No person shall operate a motor vehicle while such person
4 has .18 of one per centum or more by weight of alcohol in such person's
5 blood or is impaired by the ingestion of a drug or drugs as shown by
6 chemical analysis of such person's blood, breath, urine or [~~saliva~~] oral
7 fluid, or by an evaluation conducted by a certified drug recognition
8 expert, or any portion thereof, made pursuant to the provisions of
9 section eleven hundred ninety-four of this article.

10 5. Commercial motor vehicles: per se - level I. Notwithstanding the
11 provisions of section eleven hundred ninety-five of this article, no
12 person shall operate a commercial motor vehicle while such person has
13 .04 of one per centum or more but not more than .06 of one per centum by
14 weight of alcohol in the person's blood as shown by chemical analysis of
15 such person's blood, breath, urine or [~~saliva~~] oral fluid, or by an
16 evaluation conducted by a certified drug recognition expert, or any
17 portion thereof, made pursuant to the provisions of section eleven
18 hundred ninety-four of this article; provided, however, nothing
19 contained in this subdivision shall prohibit the imposition of a charge
20 of a violation of subdivision one of this section, or of section eleven
21 hundred ninety-two-a of this article where a person under the age of
22 twenty-one operates a commercial motor vehicle where a chemical analysis
23 of such person's blood, breath, urine, or [~~saliva~~] oral fluid, or by an
24 evaluation conducted by a certified drug recognition expert, or any
25 portion thereof, made pursuant to the provisions of section eleven
26 hundred ninety-four of this article, indicates that such operator has
27 .02 of one per centum or more but less than .04 of one per centum by
28 weight of alcohol in such operator's blood or was impaired by the inges-
29 tion of a drug or drugs.

30 6. Commercial motor vehicles; per se - level II. Notwithstanding the
31 provisions of section eleven hundred ninety-five of this article, no
32 person shall operate a commercial motor vehicle while such person has
33 more than .06 of one per centum but less than .08 of one per centum by
34 weight of alcohol in the person's blood as shown by chemical analysis of
35 such person's blood, breath, urine or [~~saliva~~] oral fluid, or by an
36 evaluation conducted by a certified drug recognition expert, or any
37 portion thereof, made pursuant to the provisions of section eleven
38 hundred ninety-four of this article; provided, however, nothing
39 contained in this subdivision shall prohibit the imposition of a charge
40 of a violation of subdivision one of this section.

41 § 5. Section 1192-a of the vehicle and traffic law, as added by chap-
42 ter 196 of the laws of 1996, is amended to read as follows:

43 § 1192-a. Operating a motor vehicle after having consumed alcohol;
44 under the age of twenty-one; per se. No person under the age of twenty-
45 one shall operate a motor vehicle after having consumed alcohol as
46 defined in this section. For purposes of this section, a person under
47 the age of twenty-one is deemed to have consumed alcohol only if such
48 person has .02 of one per centum or more but not more than .07 of one
49 per centum by weight of alcohol in the person's blood, as shown by chem-
50 ical analysis of such person's blood, breath, urine or [~~saliva~~] oral
51 fluid, made pursuant to the provisions of section eleven hundred nine-
52 ty-four of this article. Any person who operates a motor vehicle in
53 violation of this section, and who is not charged with a violation of
54 any subdivision of section eleven hundred ninety-two of this article
55 arising out of the same incident shall be referred to the department for
56 action in accordance with the provisions of section eleven hundred nine-

ty-four-a of this article. Except as otherwise provided in subdivision five of section eleven hundred ninety-two of this article, this section shall not apply to a person who operates a commercial motor vehicle. Notwithstanding any provision of law to the contrary, a finding that a person under the age of twenty-one operated a motor vehicle after having consumed alcohol in violation of this section is not a judgment of conviction for a crime or any other offense.

§ 6. Clause (a), the opening paragraph of clause (b), and item (i) of clause (e) of subparagraph 12 of paragraph b of subdivision 2 of section 1193 of the vehicle and traffic law, as added by chapter 732 of the laws of 2006, are amended to read as follows:

(a) Notwithstanding any other provision of this chapter to the contrary, whenever a revocation is imposed upon a person for the refusal to submit to a chemical test or an evaluation conducted by a certified drug recognition expert pursuant to the provisions of section eleven hundred ninety-four of this article or conviction for any violation of section eleven hundred ninety-two of this article for which a sentence of imprisonment may be imposed, and such person has: (i) within the previous four years been twice convicted of any provisions of section eleven hundred ninety-two of this article or a violation of the penal law for which a violation of such section eleven hundred ninety-two is an essential element and at least one such conviction was for a crime, or has twice been found to have refused to submit to a chemical test or an evaluation conducted by a certified drug recognition expert pursuant to section eleven hundred ninety-four of this article, or has any combination of two such convictions and findings of refusal not arising out of the same incident; or (ii) within the previous eight years been convicted three times of any provision of section eleven hundred ninety-two of this article for which a sentence of imprisonment may be imposed or a violation of the penal law for which a violation of such section eleven hundred ninety-two is an essential element and at least two such convictions were for crimes, or has been found, on three separate occasions, to have refused to submit to a chemical test or an evaluation conducted by a certified drug recognition expert pursuant to section eleven hundred ninety-four of this article, or has any combination of such convictions and findings of refusal not arising out of the same incident, such revocation shall be permanent.

The permanent driver's license revocation required by clause (a) of this subparagraph shall be waived by the commissioner after a period of five years has expired since the imposition of such permanent revocation, provided that during such five-year period such person has not been found to have refused a chemical test or an evaluation conducted by a certified drug recognition expert pursuant to section eleven hundred ninety-four of this article while operating a motor vehicle and has not been convicted of a violation of any subdivision of section eleven hundred ninety-two of this article or section five hundred eleven of this chapter or a violation of the penal law for which a violation of any subdivision of such section eleven hundred ninety-two is an essential element and either:

(i) that during such eight-year period such person has not been found to have refused a chemical test or an evaluation conducted by a certified drug recognition expert pursuant to section eleven hundred ninety-four of this article while operating a motor vehicle and has not been convicted of a violation of any subdivision of section eleven hundred ninety-two of this article or section five hundred eleven of this chapter or a violation of the penal law for which a violation of any such

1 subdivisions of such section eleven hundred ninety-two is an essential
2 element; and

3 § 7. The opening paragraph and item (i) of clause b of subparagraph 3
4 of paragraph (e) of subdivision 2 of section 1193 of the vehicle and
5 traffic law, as amended by section 17 of part E of chapter 60 of the
6 laws of 2005, are amended to read as follows:

7 Any person who holds a commercial driver's license and is convicted of
8 a violation of any subdivision of section eleven hundred ninety-two of
9 this article who has had a prior finding of refusal to submit to a chem-
10 ical test or an evaluation conducted by a certified drug recognition
11 expert pursuant to section eleven hundred ninety-four of this article or
12 has had a prior conviction of any of the following offenses: any
13 violation of section eleven hundred ninety-two of this article; any
14 violation of subdivision one or two of section six hundred of this chap-
15 ter; or has a prior conviction of any felony involving the use of a
16 motor vehicle pursuant to paragraph (a) of subdivision one of section
17 five hundred ten-a of this chapter, shall be permanently disqualified
18 from operating a commercial motor vehicle. The commissioner may waive
19 such disqualification and prohibition hereinbefore provided after a
20 period of ten years has expired from such sentence provided:

21 (i) that during such ten year period such person has not been found to
22 have refused a chemical test or an evaluation conducted by a certified
23 drug recognition expert pursuant to section eleven hundred ninety-four
24 of this article while operating a motor vehicle and has not been
25 convicted of any one of the following offenses while operating a motor
26 vehicle: any violation of section eleven hundred ninety-two of this
27 article; any violation of subdivision one or two of section six hundred
28 of this chapter; or has a prior conviction of any felony involving the
29 use of a motor vehicle pursuant to paragraph (a) of subdivision one of
30 section five hundred ten-a of this chapter;

31 § 8. The subparagraph heading and clauses a and b of subparagraph 7 of
32 paragraph (e) of subdivision 2 of section 1193 of the vehicle and traf-
33 fic law, as added by chapter 312 of the laws of 1994, clause a as
34 amended by chapter 732 of the laws of 2006 and clause b as separately
35 amended by chapters 3 and 571 of the laws of 2002, are amended to read
36 as follows:

37 Suspension pending prosecution; excessive blood alcohol content or
38 impairment by a drug or drugs. a. Except as provided in clause a-1 of
39 this subparagraph, a court shall suspend a driver's license, pending
40 prosecution, of any person charged with a violation of subdivision two,
41 two-a, three or four-a of section eleven hundred ninety-two of this
42 article who, at the time of arrest, is alleged to have had .08 of one
43 percent or more by weight of alcohol in such driver's blood or is
44 alleged to have been impaired by the ingestion of a drug or drugs as
45 shown by chemical analysis of blood, breath, urine or [saliva] oral
46 fluid, or by an evaluation conducted by a certified drug recognition
47 expert, or any portion thereof, made pursuant to subdivision two or
48 three of section eleven hundred ninety-four of this article, or the
49 driver makes a statement admitting to driving while intoxicated by alco-
50 hol or while impaired by a drug or drugs.

51 b. The suspension occurring under clause a of this subparagraph shall
52 occur no later than at the conclusion of all proceedings required for
53 the arraignment and the suspension occurring under clause a-1 of this
54 subparagraph shall occur immediately after the holder's first appearance
55 before the court on the charge which shall, whenever possible, be the
56 next regularly scheduled session of the court after the arrest or at the

1 conclusion of all proceedings required for the arraignment; provided,
2 however, that if the results of any test administered pursuant to
3 section eleven hundred ninety-four of this article are not available
4 within such time period, the complainant police officer or other public
5 servant shall transmit such results to the court at the time they become
6 available, and the court shall, as soon as practicable following the
7 receipt of such results and in compliance with the requirements of this
8 subparagraph, suspend such license. In order for the court to impose
9 such suspension it must find that the accusatory instrument conforms to
10 the requirements of section 100.40 of the criminal procedure law and
11 there exists reasonable cause to believe either that (a) the holder
12 operated a motor vehicle while such holder had .08 of one percent or
13 more by weight of alcohol or was impaired by the ingestion of a drug or
14 drugs in [~~his or her~~] their blood as was shown by chemical analysis of
15 such person's blood, breath, urine or [~~saliva~~] oral fluid, or by an
16 evaluation conducted by a certified drug recognition expert, or any
17 portion thereof, made pursuant to the provisions of section eleven
18 hundred ninety-four of this article, or the driver makes a statement
19 admitting to driving while intoxicated by alcohol or while impaired by a
20 drug or drugs, or (b) the person was the holder of a class DJ or MJ
21 learner's permit or a class DJ or MJ driver's license and operated a
22 motor vehicle while such holder was in violation of subdivision one, two
23 and/or three of section eleven hundred ninety-two of this article. At
24 the time of such license suspension the holder shall be entitled to an
25 opportunity to make a statement regarding these two issues and to pres-
26 ent evidence tending to rebut the court's findings.

27 § 9. Section 1194 of the vehicle and traffic law, as added by chapter
28 47 of the laws of 1988, paragraph (a) of subdivision 2 as amended by
29 chapter 196 of the laws of 1996, paragraphs (b) and (c) of subdivision 2
30 as amended by chapter 489 of the laws of 2017, clause (A) of subpara-
31 graph 1, subparagraphs 2 and 3 of paragraph (b), subparagraphs 1, 2 and
32 3 of paragraph (c) of subdivision 2 as amended by chapter 27 of the laws
33 of 2018, subparagraphs 1 and 2 of paragraph (d) of subdivision 2 as
34 amended by chapter 732 of the laws of 2006, item (iii) of clause c of
35 subparagraph 1 of paragraph (d) of subdivision 2 as amended by section
36 37 of part LL of chapter 56 of the laws of 2010, and subparagraph 1 of
37 paragraph (a) of subdivision 4 as amended by chapter 169 of the laws of
38 2010, is amended to read as follows:

39 § 1194. Arrest and testing. 1. Arrest and field testing. (a) Arrest.
40 Notwithstanding the provisions of section 140.10 of the criminal proce-
41 dure law, a police officer may, without a warrant, arrest a person, in
42 case of a violation of subdivision one of section eleven hundred nine-
43 ty-two of this article, if such violation is coupled with an accident or
44 collision in which such person is involved, which in fact has been
45 committed, though not in the police officer's presence, when the officer
46 has reasonable cause to believe that the violation was committed by such
47 person.

48 (b) Field testing. Every person operating a motor vehicle which has
49 been involved in an accident or which is operated in violation of any of
50 the provisions of this chapter shall, at the request of a police offi-
51 cer, submit to a breath test and oral fluid test to be administered by
52 the police officer. If such test indicates that such operator has
53 consumed alcohol or a drug or drugs, the police officer may request such
54 operator to submit to a chemical test and an evaluation conducted by a
55 certified drug recognition expert in the manner set forth in subdivision
56 two of this section.

(c) Refusal to submit to a breath test or oral fluid test pursuant to paragraph (b) of this subdivision shall be a traffic infraction, subject to penalties as defined in section eighteen hundred of this chapter.

2. Chemical tests and certified drug recognition evaluations. (a) When authorized. Any person who operates a motor vehicle in this state shall be deemed to have given consent to an evaluation conducted by a certified drug recognition expert, and a chemical test of one or more of the following: breath, blood, urine, or [~~saliva~~] oral fluid, for the purpose of determining the alcoholic and/or drug content [~~of the blood~~] within such person's body, provided that such test is administered by or at the direction of a police officer with respect to a chemical test of breath, urine or [~~saliva~~] oral fluid or, with respect to a chemical test of blood, at the direction of a police officer:

(1) having reasonable grounds to believe such person to have been operating in violation of any subdivision of section eleven hundred ninety-two of this article and within two hours after such person has been placed under arrest for any such violation; or having reasonable grounds to believe such person to have been operating in violation of section eleven hundred ninety-two-a of this article and within two hours after the stop of such person for any such violation,

(2) within two hours after a breath test or oral fluid test, as provided in paragraph (b) of subdivision one of this section, indicates that alcohol [~~has~~] or a drug or drugs have been consumed by such person and in accordance with the rules and regulations established by the police force of which the officer is a member;

(3) for the purposes of this paragraph, "reasonable grounds" to believe that a person has been operating a motor vehicle after having consumed alcohol in violation of section eleven hundred ninety-two-a of this article shall be determined by viewing the totality of circumstances surrounding the incident which, when taken together, indicate that the operator was driving in violation of such subdivision. Such circumstances may include any visible or behavioral indication of alcohol consumption by the operator, the existence of an open container containing or having contained an alcoholic beverage in or around the vehicle driven by the operator, or any other evidence surrounding the circumstances of the incident which indicates that the operator has been operating a motor vehicle after having consumed alcohol at the time of the incident; or

(4) notwithstanding any other provision of law to the contrary, no person under the age of twenty-one shall be arrested for an alleged violation of section eleven hundred ninety-two-a of this article. However, a person under the age of twenty-one for whom a chemical test or an evaluation conducted by a certified drug recognition expert is authorized pursuant to this paragraph may be temporarily detained by the police solely for the purpose of requesting or administering such chemical test or an evaluation conducted by a certified drug recognition expert whenever arrest without a warrant for a petty offense would be authorized in accordance with the provisions of section 140.10 of the criminal procedure law or paragraph (a) of subdivision one of this section.

(b) Report of refusal. (1) If: (A) such person having been placed under arrest; or (B) after a breath or oral fluid test indicates the presence of alcohol or a drug or drugs in the person's system; or (C) with regard to a person under the age of twenty-one, there are reasonable grounds to believe that such person has been operating a motor vehicle after having consumed alcohol in violation of section eleven

1 hundred ninety-two-a of this article; and having thereafter been
2 requested to submit to such chemical test or an evaluation conducted by
3 a certified drug recognition expert and having been informed that the
4 person's license or permit to drive and any non-resident operating priv-
5 ilege shall be immediately suspended and subsequently revoked, or, for
6 operators under the age of twenty-one for whom there are reasonable
7 grounds to believe that such operator has been operating a motor vehicle
8 after having consumed alcohol in violation of section eleven hundred
9 ninety-two-a of this article, shall be revoked for refusal to submit to
10 such chemical test or any portion thereof, or an evaluation conducted by
11 a certified drug recognition expert or any portion thereof whether or
12 not the person is found guilty of the charge for which such person is
13 arrested or detained, refuses to submit to such chemical test or any
14 portion thereof[~~, unless a court order has been granted pursuant to~~
15 ~~subdivision three of this section~~] or an evaluation conducted by a
16 certified drug recognition expert or any portion thereof, the test shall
17 not be given and a written report of such refusal shall be immediately
18 made by the police officer before whom such refusal was made. Such
19 report may be verified by having the report sworn to, or by affixing to
20 such report a form notice that false statements made therein are punish-
21 able as a class A misdemeanor pursuant to section 210.45 of the penal
22 law and such form notice together with the subscription of the deponent
23 shall constitute a verification of the report.

24 (2) The report of the police officer shall set forth reasonable
25 grounds to believe such arrested person or such detained person under
26 the age of twenty-one had been driving in violation of any subdivision
27 of section eleven hundred ninety-two or eleven hundred ninety-two-a of
28 this article, that said person had refused to submit to such chemical
29 test, [~~and that no chemical test was administered pursuant to the~~
30 ~~requirements of subdivision three of this section~~] or an evaluation
31 conducted by a certified drug recognition expert or any portion thereof.
32 The report shall be presented to the court upon arraignment of an
33 arrested person, provided, however, in the case of a person under the
34 age of twenty-one, for whom a test was authorized pursuant to the
35 provisions of subparagraph two or three of paragraph (a) of this subdivi-
36 sion, and who has not been placed under arrest for a violation of any
37 of the provisions of section eleven hundred ninety-two of this article,
38 such report shall be forwarded to the commissioner within forty-eight
39 hours in a manner to be prescribed by the commissioner, and all subse-
40 quent proceedings with regard to refusal to submit to such chemical test
41 or an evaluation conducted by a certified drug recognition expert by
42 such person shall be as set forth in subdivision three of section eleven
43 hundred ninety-four-a of this article.

44 (3) For persons placed under arrest for a violation of any subdivision
45 of section eleven hundred ninety-two of this article, the license or
46 permit to drive and any non-resident operating privilege shall, upon the
47 basis of such written report, be temporarily suspended by the court
48 without notice pending the determination of a hearing as provided in
49 paragraph (c) of this subdivision. Copies of such report must be trans-
50 mitted by the court to the commissioner and such transmittal may not be
51 waived even with the consent of all the parties. Such report shall be
52 forwarded to the commissioner within forty-eight hours of such arraign-
53 ment.

54 (4) The court or the police officer, in the case of a person under the
55 age of twenty-one alleged to be driving after having consumed alcohol,
56 shall provide such person with a scheduled hearing date, a waiver form,

1 and such other information as may be required by the commissioner. If a
2 hearing, as provided for in paragraph (c) of this subdivision, or subdivi-
3 sion three of section eleven hundred ninety-four-a of this article, is
4 waived by such person, the commissioner shall immediately revoke the
5 license, permit, or non-resident operating privilege, as of the date of
6 receipt of such waiver in accordance with the provisions of paragraph
7 (d) of this subdivision.

8 (c) Hearings. Any person whose license or permit to drive or any non-
9 resident driving privilege has been suspended pursuant to paragraph (b)
10 of this subdivision is entitled to a hearing in accordance with a hear-
11 ing schedule to be promulgated by the commissioner. If the department
12 fails to provide for such hearing fifteen days after the date of the
13 arraignment of the arrested person, the license, permit to drive or
14 non-resident operating privilege of such person shall be reinstated
15 pending a hearing pursuant to this section. The hearing shall be limited
16 to the following issues: (1) did the police officer have reasonable
17 grounds to believe that such person had been driving in violation of any
18 subdivision of section eleven hundred ninety-two of this article; (2)
19 did the police officer make a lawful arrest of such person; (3) was such
20 person given sufficient warning, in clear or unequivocal language, prior
21 to such refusal that such refusal to submit to such chemical test or any
22 portion thereof, or an evaluation conducted by a certified drug recogni-
23 tion expert or any portion thereof, would result in the immediate
24 suspension and subsequent revocation of such person's license or operat-
25 ing privilege whether or not such person is found guilty of the charge
26 for which the arrest was made; and (4) did such person refuse to submit
27 to such chemical test or any portion thereof, or an evaluation conducted
28 by a certified drug recognition expert or any portion thereof. If,
29 after such hearing, the hearing officer, acting on behalf of the commis-
30 sioner, finds on any one of said issues in the negative, the hearing
31 officer shall immediately terminate any suspension arising from such
32 refusal. If, after such hearing, the hearing officer, acting on behalf
33 of the commissioner finds all of the issues in the affirmative, such
34 officer shall immediately revoke the license or permit to drive or any
35 non-resident operating privilege in accordance with the provisions of
36 paragraph (d) of this subdivision. A person who has had a license or
37 permit to drive or non-resident operating privilege suspended or revoked
38 pursuant to this subdivision may appeal the findings of the hearing
39 officer in accordance with the provisions of article three-A of this
40 chapter. Any person may waive the right to a hearing under this section.
41 Failure by such person to appear for the scheduled hearing shall consti-
42 tute a waiver of such hearing, provided, however, that such person may
43 petition the commissioner for a new hearing which shall be held as soon
44 as practicable.

45 (d) Sanctions. (1) Revocations. a. Any license which has been revoked
46 pursuant to paragraph (c) of this subdivision shall not be restored for
47 at least one year after such revocation, nor thereafter, except in the
48 discretion of the commissioner. However, no such license shall be
49 restored for at least eighteen months after such revocation, nor there-
50 after except in the discretion of the commissioner, in any case where
51 the person has had a prior revocation resulting from refusal to submit
52 to a chemical test or an evaluation conducted by a certified drug recog-
53 nition expert or any portion thereof, or has been convicted of or found
54 to be in violation of any subdivision of section eleven hundred ninety-
55 two or section eleven hundred ninety-two-a of this article not arising
56 out of the same incident, within the five years immediately preceding

1 the date of such revocation; provided, however, a prior finding that a
2 person under the age of twenty-one has refused to submit to a chemical
3 test or an evaluation conducted by a certified drug recognition expert
4 or any portion thereof pursuant to subdivision three of section eleven
5 hundred ninety-four-a of this article shall have the same effect as a
6 prior finding of a refusal pursuant to this subdivision solely for the
7 purpose of determining the length of any license suspension or revoca-
8 tion required to be imposed under any provision of this article,
9 provided that the subsequent offense or refusal is committed or occurred
10 prior to the expiration of the retention period for such prior refusal
11 as set forth in paragraph (k) of subdivision one of section two hundred
12 one of this chapter.

13 b. Any license which has been revoked pursuant to paragraph (c) of
14 this subdivision or pursuant to subdivision three of section eleven
15 hundred ninety-four-a of this article, where the holder was under the
16 age of twenty-one years at the time of such refusal, shall not be
17 restored for at least one year, nor thereafter, except in the discretion
18 of the commissioner. Where such person under the age of twenty-one years
19 has a prior finding, conviction or youthful offender adjudication
20 resulting from a violation of section eleven hundred ninety-two or
21 section eleven hundred ninety-two-a of this article, not arising from
22 the same incident, such license shall not be restored for at least one
23 year or until such person reaches the age of twenty-one years, whichever
24 is the greater period of time, nor thereafter, except in the discretion
25 of the commissioner.

26 c. Any commercial driver's license which has been revoked pursuant to
27 paragraph (c) of this subdivision based upon a finding of refusal to
28 submit to a chemical test or an evaluation conducted by a certified drug
29 recognition expert or any portion thereof, where such finding occurs
30 within or outside of this state, shall not be restored for at least
31 eighteen months after such revocation, nor thereafter, except in the
32 discretion of the commissioner, but shall not be restored for at least
33 three years after such revocation, nor thereafter, except in the
34 discretion of the commissioner, if the holder of such license was oper-
35 ating a commercial motor vehicle transporting hazardous materials at the
36 time of such refusal. However, such person shall be permanently disqual-
37 ified from operating a commercial motor vehicle in any case where the
38 holder has a prior finding of refusal to submit to a chemical test or an
39 evaluation thereof conducted by a certified drug recognition expert or
40 any portion thereof pursuant to this section or has a prior conviction
41 of any of the following offenses: any violation of section eleven
42 hundred ninety-two of this article; any violation of subdivision one or
43 two of section six hundred of this chapter; or has a prior conviction of
44 any felony involving the use of a motor vehicle pursuant to paragraph
45 (a) of subdivision one of section five hundred ten-a of this chapter.
46 Provided that the commissioner may waive such permanent revocation after
47 a period of ten years has expired from such revocation provided:

48 (i) that during such ten year period such person has not been found to
49 have refused a chemical test or an evaluation conducted by a certified
50 drug recognition expert or any portion thereof pursuant to this section
51 and has not been convicted of any one of the following offenses: any
52 violation of section eleven hundred ninety-two of this article; refusal
53 to submit to a chemical test or an evaluation conducted by a certified
54 drug recognition expert or any portion thereof pursuant to this section;
55 any violation of subdivision one or two of section six hundred of this
56 chapter; or has a prior conviction of any felony involving the use of a

1 motor vehicle pursuant to paragraph (a) of subdivision one of section
2 five hundred ten-a of this chapter;

3 (ii) that such person provides acceptable documentation to the commis-
4 sioner that such person is not in need of alcohol or drug treatment or
5 has satisfactorily completed a prescribed course of such treatment; and

6 (iii) after such documentation is accepted, that such person is grant-
7 ed a certificate of relief from disabilities or a certificate of good
8 conduct pursuant to article twenty-three of the correction law by the
9 court in which such person was last penalized.

10 d. Upon a third finding of refusal and/or conviction of any of the
11 offenses which require a permanent commercial driver's license revoca-
12 tion, such permanent revocation may not be waived by the commissioner
13 under any circumstances.

14 (2) Civil penalties. Except as otherwise provided, any person whose
15 license, permit to drive, or any non-resident operating privilege is
16 revoked pursuant to the provisions of this section shall also be liable
17 for a civil penalty in the amount of five hundred dollars except that if
18 such revocation is a second or subsequent revocation pursuant to this
19 section issued within a five year period, or such person has been
20 convicted of a violation of any subdivision of section eleven hundred
21 ninety-two of this article within the past five years not arising out of
22 the same incident, the civil penalty shall be in the amount of seven
23 hundred fifty dollars. Any person whose license is revoked pursuant to
24 the provisions of this section based upon a finding of refusal to submit
25 to a chemical test or an evaluation conducted by a certified drug recog-
26 nitition expert or any portion thereof while operating a commercial motor
27 vehicle shall also be liable for a civil penalty of five hundred fifty
28 dollars except that if such person has previously been found to have
29 refused a chemical test or an evaluation conducted by a certified drug
30 recognition expert or any portion thereof pursuant to this section while
31 operating a commercial motor vehicle or has a prior conviction of any of
32 the following offenses while operating a commercial motor vehicle: any
33 violation of section eleven hundred ninety-two of this article; any
34 violation of subdivision two of section six hundred of this chapter; or
35 has a prior conviction of any felony involving the use of a commercial
36 motor vehicle pursuant to paragraph (a) of subdivision one of section
37 five hundred ten-a of this chapter, then the civil penalty shall be
38 seven hundred fifty dollars. No new driver's license or permit shall be
39 issued, or non-resident operating privilege restored to such person
40 unless such penalty has been paid. All penalties collected by the
41 department pursuant to the provisions of this section shall be the prop-
42 erty of the state and shall be paid into the general fund of the state
43 treasury.

44 (3) Effect of rehabilitation program. No period of revocation arising
45 out of this section may be set aside by the commissioner for the reason
46 that such person was a participant in the alcohol and drug rehabili-
47 tation program set forth in section eleven hundred ninety-six of this
48 article.

49 (e) Regulations. The commissioner shall promulgate such rules and
50 regulations as may be necessary to effectuate the provisions of subdivi-
51 sions one and two of this section.

52 (f) Evidence. Evidence of a refusal to submit to such chemical test or
53 an evaluation conducted by a certified drug recognition expert or any
54 portion thereof shall be admissible in any trial, proceeding or hearing
55 based upon a violation of the provisions of section eleven hundred nine-
56 ty-two of this article but only upon a showing that the person was given

1 sufficient warning, in clear and unequivocal language, of the effect of
2 such refusal and that the person persisted in the refusal. Evidence of
3 a refusal shall be admissible pursuant to this section regardless of the
4 time of the refusal.

5 (g) Results. Upon the request of the person who was tested, the
6 results of such test shall be made available to such person.

7 3. Compulsory chemical tests and certified drug recognition evalu-
8 ations. (a) Court ordered chemical tests and certified drug recognition
9 evaluations. Notwithstanding the provisions of subdivision two of this
10 section, no person who operates a motor vehicle in this state may refuse
11 to submit to a chemical test or an evaluation conducted by a certified
12 drug recognition expert of one or more of the following: breath, blood,
13 urine or [~~saliva~~] oral fluids, for the purpose of determining the alco-
14 holic and/or drug content of the blood or oral fluids when a court order
15 for such chemical test or certified drug recognition evaluation has been
16 issued in accordance with the provisions of this subdivision.

17 (b) When authorized. Upon refusal by any person to submit to a chemi-
18 cal test or an evaluation conducted by a certified drug recognition
19 expert or any portion thereof as described above, the test or evaluation
20 shall not be given unless a police officer or a district attorney, as
21 defined in subdivision thirty-two of section 1.20 of the criminal proce-
22 dure law, requests and obtains a court order to compel a person to
23 submit to a chemical test or an evaluation conducted by a certified drug
24 recognition expert to determine the alcoholic or drug content of the
25 person's blood or oral fluids upon a finding of reasonable cause to
26 believe that:

27 (1) such person was the operator of a motor vehicle and in the course
28 of such operation [~~a person other than the operator was killed or~~
29 ~~suffered serious physical injury as defined in section 10.00 of the~~
30 ~~penal law~~]; the motor vehicle was involved in a crash; personal injury
31 has been caused to another person, due to an incident involving the
32 motor vehicle operated by such person; or such person has a previous
33 conviction for a violation of any subdivision of section eleven hundred
34 ninety-two of this article; and

35 (2) a. either such person operated the vehicle in violation of any
36 subdivision of section eleven hundred ninety-two of this article, or

37 b. a breath test or oral fluid test administered by a police officer
38 in accordance with paragraph (b) of subdivision one of this section
39 indicates that alcohol or a drug or drugs has been consumed by such
40 person; and

41 (3) such person has been placed under lawful arrest; and

42 (4) such person has refused to submit to a chemical test or an evalu-
43 ation conducted by a recognition expert, or any portion thereof,
44 requested in accordance with the provisions of paragraph (a) of subdivi-
45 sion two of this section or is unable to give consent to such a test or
46 evaluation.

47 (c) Reasonable cause; definition. For the purpose of this subdivision
48 "reasonable cause" shall be determined by viewing the totality of
49 circumstances surrounding the incident which, when taken together, indi-
50 cate that the operator was driving in violation of section eleven
51 hundred ninety-two of this article. Such circumstances may include, but
52 are not limited to: evidence that the operator was operating a motor
53 vehicle in violation of any provision of this article or any other
54 moving violation at the time of the incident; any visible indication of
55 alcohol or drug consumption or impairment by the operator; the existence
56 of an open container containing an alcoholic beverage or a drug or drugs

1 in or around the vehicle driven by the operator; any other evidence
2 surrounding the circumstances of the incident which indicates that the
3 operator has been operating a motor vehicle while impaired by the
4 consumption of alcohol or drugs or intoxicated at the time of the inci-
5 dent.

6 (d) Court order; procedure. (1) An application for a court order to
7 compel submission to a chemical test or an evaluation conducted by a
8 certified drug recognition expert, or any portion thereof, may be made
9 to any supreme court justice, county court judge or district court judge
10 in the judicial district in which the incident occurred, or if the inci-
11 dent occurred in the city of New York before any supreme court justice
12 or judge of the criminal court of the city of New York. Such application
13 may be communicated by telephone, radio or other means of electronic
14 communication, or in person.

15 (2) The applicant must provide identification by name and title and
16 must state the purpose of the communication. Upon being advised that an
17 application for a court order to compel submission to a chemical test or
18 an evaluation conducted by a certified drug recognition expert is being
19 made, the court shall place under oath the applicant and any other
20 person providing information in support of the application as provided
21 in subparagraph three of this paragraph. After being sworn the applicant
22 must state that the person from whom the chemical test or an evaluation
23 conducted by a certified drug recognition expert was requested was the
24 operator of a motor vehicle and in the course of such operation [~~a~~
25 ~~person, other than the operator, has been killed or seriously injured~~]
26 the motor vehicle was involved in a crash, personal injury has been
27 caused to another person due to an incident involving the motor vehicle
28 operated by such person, or such person has a previous arrest for a
29 violation of any subdivision of section eleven hundred ninety-two of
30 this article, and, based upon the totality of circumstances, there is
31 reasonable cause to believe that such person was operating a motor vehi-
32 cle in violation of any subdivision of section eleven hundred ninety-two
33 of this article and, after being placed under lawful arrest such person
34 refused to submit to a chemical test or an evaluation conducted by a
35 certified drug recognition expert, or any portion thereof, in accordance
36 with the provisions of this section or is unable to give consent to such
37 a test or evaluation or any portion thereof. The applicant must make
38 specific allegations of fact to support such statement. Any other person
39 properly identified, may present sworn allegations of fact in support of
40 the applicant's statement.

41 (3) Upon being advised that an oral application for a court order to
42 compel a person to submit to a chemical test or an evaluation conducted
43 by a certified drug recognition expert is being made, a judge or justice
44 shall place under oath the applicant and any other person providing
45 information in support of the application. Such oath or oaths and all of
46 the remaining communication must be recorded, either by means of a voice
47 recording device or verbatim stenographic or verbatim longhand notes. If
48 a voice recording device is used or a stenographic record made, the
49 judge must have the record transcribed, certify to the accuracy of the
50 transcription and file the original record and transcription with the
51 court within seventy-two hours of the issuance of the court order. If
52 the longhand notes are taken, the judge shall subscribe a copy and file
53 it with the court within twenty-four hours of the issuance of the order.

54 (4) If the court is satisfied that the requirements for the issuance
55 of a court order pursuant to the provisions of paragraph (b) of this
56 subdivision have been met, it may grant the application and issue an

1 order requiring the accused to submit to a chemical test or an evaluation
2 conducted by a certified drug recognition expert to determine the
3 alcoholic and/or drug content of [~~his~~] their blood [~~and~~] or oral fluids
4 and ordering the withdrawal of a blood or oral fluid sample in accord-
5 ance with the provisions of paragraph (a) of subdivision four of this
6 section. When a judge or justice determines to issue an order to compel
7 submission to a chemical test or an evaluation conducted by a certified
8 drug recognition expert based on an oral application, the applicant
9 therefor shall prepare the order in accordance with the instructions of
10 the judge or justice. In all cases the order shall include the name of
11 the issuing judge or justice, the name of the applicant, and the date
12 and time it was issued. It must be signed by the judge or justice if
13 issued in person, or by the applicant if issued orally.

14 (5) Any false statement by an applicant or any other person in support
15 of an application for a court order shall subject such person to the
16 offenses for perjury set forth in article two hundred ten of the penal
17 law.

18 (6) The chief administrator of the courts shall establish a schedule
19 to provide that a sufficient number of judges or justices will be avail-
20 able in each judicial district to hear oral applications for court
21 orders as permitted by this section.

22 (e) Administration of compulsory chemical test or certified drug
23 recognition evaluation. An order issued pursuant to the provisions of
24 this subdivision shall require that a chemical test or an evaluation
25 conducted by a certified drug recognition expert to determine the alco-
26 holic and/or drug content of the operator's blood or oral fluid must be
27 administered. The provisions of paragraphs (a), (b) and (c) of subdivi-
28 sion four of this section shall be applicable to any chemical test or
29 evaluation conducted by a certified drug recognition expert administered
30 pursuant to this section.

31 4. Testing procedures. (a) Persons authorized to withdraw blood; immu-
32 nity; testimony. (1) At the request of a police officer, the following
33 persons may withdraw blood for the purpose of determining the alcoholic
34 or drug content therein: (i) a physician, a registered professional
35 nurse, a registered physician assistant, a certified nurse practitioner,
36 or an advanced emergency medical technician as certified by the depart-
37 ment of health; or (ii) under the supervision and at the direction of a
38 physician, registered physician assistant or certified nurse practition-
39 er acting within [~~his or her~~] their lawful scope of practice, or upon
40 the express consent of the person eighteen years of age or older from
41 whom such blood is to be withdrawn: a clinical laboratory technician or
42 clinical laboratory technologist licensed pursuant to article one
43 hundred sixty-five of the education law; a phlebotomist; or a medical
44 laboratory technician or medical technologist employed by a clinical
45 laboratory approved under title five of article five of the public
46 health law. This limitation shall not apply to the taking of a urine,
47 [~~saliva~~] oral fluid or breath specimen.

48 (2) No person entitled to withdraw blood pursuant to subparagraph one
49 of this paragraph or hospital employing such person, and no other
50 employer of such person shall be sued or held liable for any act done or
51 omitted in the course of withdrawing blood at the request of a police
52 officer pursuant to this section.

53 (3) Any person who may have a cause of action arising from the with-
54 drawal of blood as aforesaid, for which no personal liability exists
55 under subparagraph two of this paragraph, may maintain such action
56 against the state if any person entitled to withdraw blood pursuant to

1 paragraph (a) hereof acted at the request of a police officer employed
2 by the state, or against the appropriate political subdivision of the
3 state if such person acted at the request of a police officer employed
4 by a political subdivision of the state. No action shall be maintained
5 pursuant to this subparagraph unless notice of claim is duly filed or
6 served in compliance with law.

7 (4) Notwithstanding the foregoing provisions of this paragraph an
8 action may be maintained by the state or a political subdivision thereof
9 against a person entitled to withdraw blood pursuant to subparagraph one
10 of this paragraph or hospital employing such person for whose act or
11 omission the state or the political subdivision has been held liable
12 under this paragraph to recover damages, not exceeding the amount
13 awarded to the claimant, that may have been sustained by the state or
14 the political subdivision by reason of gross negligence or bad faith on
15 the part of such person.

16 (5) The testimony of any person other than a physician, entitled to
17 withdraw blood pursuant to subparagraph one of this paragraph, in
18 respect to any such withdrawal of blood made by such person may be
19 received in evidence with the same weight, force and effect as if such
20 withdrawal of blood were made by a physician.

21 (6) The provisions of subparagraphs two, three and four of this para-
22 graph shall also apply with regard to any person employed by a hospital
23 as security personnel for any act done or omitted in the course of with-
24 drawing blood at the request of a police officer pursuant to a court
25 order in accordance with subdivision three of this section.

26 (b) Right to additional test. The person tested shall be permitted to
27 choose a physician to administer a chemical test in addition to the one
28 administered at the direction of the police officer.

29 (c) Rules and regulations. The department of health shall issue and
30 file rules and regulations approving satisfactory techniques or methods
31 of conducting chemical analyses of a person's blood, urine, breath or
32 ~~saliva~~ oral fluid and to ascertain the qualifications and competence
33 of individuals to conduct and supervise chemical analyses of a person's
34 blood, urine, breath or ~~saliva~~ oral fluid. If the analyses were made
35 by an individual possessing a permit issued by the department of health,
36 this shall be presumptive evidence that the examination was properly
37 given. The provisions of this paragraph do not prohibit the introduction
38 as evidence of an analysis made by an individual other than a person
39 possessing a permit issued by the department of health.

40 § 10. Paragraph (a) of subdivision 1 of section 1194-a of the vehicle
41 and traffic law, as added by chapter 196 of the laws of 1996, is amended
42 to read as follows:

43 (a) Whenever a chemical test of the breath, blood, urine or ~~saliva~~
44 oral fluid of an operator who is under the age of twenty-one indicates
45 that such person has operated a motor vehicle in violation of section
46 eleven hundred ninety-two-a of this article, and such person is not
47 charged with violating any subdivision of section eleven hundred nine-
48 ty-two arising out of the same incident, the police officer who adminis-
49 tered the test shall forward a report of the results of such test to the
50 department within twenty-four hours of the time when such results are
51 available in a manner prescribed by the commissioner, and the operator
52 shall be given a hearing notice as provided in subdivision one-a of this
53 section, to appear before a hearing officer in the county where the
54 chemical test was administered, or in an adjoining county under such
55 circumstances as prescribed by the commissioner, on a date to be estab-
56 lished in accordance with a schedule promulgated by the commissioner.

1 Such hearing shall occur within thirty days of, but not less than
2 forty-eight hours from, the date that the chemical test was adminis-
3 tered, provided, however, where the commissioner determines, based upon
4 the availability of hearing officers and the anticipated volume of hear-
5 ings at a particular location, that the scheduling of such hearing with-
6 in thirty days would impair the timely scheduling or conducting of other
7 hearings pursuant to this chapter, such hearing shall be scheduled at
8 the next hearing date for such particular location. When providing the
9 operator with such hearing notice, the police officer shall also give to
10 the operator, and shall, prior to the commencement of the hearing,
11 provide to the department, copies of the following reports, documents
12 and materials: any written report or document, or portion thereof,
13 concerning a physical examination, a scientific test or experiment,
14 including the most recent record of inspection, or calibration or repair
15 of machines or instruments utilized to perform such scientific tests or
16 experiments and the certification certificate, if any, held by the oper-
17 ator of the machine or instrument, which tests or examinations were made
18 by or at the request or direction of a public servant engaged in law
19 enforcement activity. The report of the police officer shall be verified
20 by having the report sworn to, or by affixing to such report a form
21 notice that false statements made therein are punishable as a class A
22 misdemeanor pursuant to section 210.45 of the penal law and such form
23 notice together with the subscription of the deponent shall constitute
24 verification of the report.

25 § 11. Subdivision 2 of section 1198-a of the vehicle and traffic law,
26 as amended by chapter 496 of the laws of 2009, is amended to read as
27 follows:

28 2. Procedure. (a) Mandatory screening; when authorized. Upon the
29 arraignment of, or at the discretion of the court, prior to the sentenc-
30 ing of any person who (i) at arraignment is charged with or prior to
31 sentencing convicted of a first violation of operating a motor vehicle
32 in violation of subdivision one, two or three or paragraph (b) of subdivi-
33 sion two-a of section eleven hundred ninety-two of this article while
34 such person has less than .15 of one per centum by weight of alcohol in
35 the person's blood as shown by chemical analysis of such person's blood,
36 breath, urine or ~~saliva~~ oral fluid, or by an evaluation conducted by a
37 certified drug recognition expert, or any portion thereof made pursuant
38 to the provisions of section eleven hundred ninety-four of this article,
39 or in violation of subdivision four of such section eleven hundred nine-
40 ty-two, or (ii) has refused to submit to a chemical test or evaluation
41 conducted by a certified drug recognition expert pursuant to section
42 eleven hundred ninety-four of this article, the court shall order such
43 person to submit to screening for alcohol or substance abuse and depend-
44 ency using a standardized written screening instrument developed by the
45 office of ~~alcoholism and substance abuse services~~ addiction services
46 and supports, to be administered by an alcohol or substance abuse
47 professional.

48 (b) Mandatory assessment; when authorized. The court shall order a
49 defendant to undergo a formal alcohol or substance abuse and dependency
50 assessment by an alcohol or substance abuse professional or a licensed
51 agency: (i) when the screening required by paragraph (a) of this subdivi-
52 sion indicates that a defendant is abusing or dependent upon alcohol
53 or drugs; (ii) following the arraignment of any person charged with or,
54 at the discretion of the court, prior to the sentencing of any person
55 convicted of a violation of subdivision one, two, three, four or four-a
56 of section eleven hundred ninety-two of this article after having been

1 convicted of a violation of any subdivision of section eleven hundred
2 ninety-two of this article or of vehicular assault in the second or
3 first degree, as defined, respectively, in sections 120.03 and 120.04 of
4 the penal law or of aggravated vehicular assault, as defined in section
5 120.04-a of the penal law or of vehicular manslaughter in the second or
6 first degree, as defined, respectively, in sections 125.12 and 125.13 of
7 the penal law or of aggravated vehicular homicide, as defined in section
8 125.14 of such law within the preceding five years or after having been
9 convicted of a violation of any subdivision of such section or of vehic-
10 ular assault in the second or first degree, as defined, respectively, in
11 sections 120.03 and 120.04 of the penal law or of aggravated vehicular
12 assault, as defined in section 120.04-a of the penal law or of vehicular
13 manslaughter in the second or first degree, as defined, respectively, in
14 sections 125.12 and 125.13 of the penal law or of aggravated vehicular
15 homicide, as defined in section 125.14 of such law, two or more times
16 within the preceding ten years; or (iii) following the arraignment of
17 any person charged with or, at the discretion of the court, prior to the
18 sentencing of any person convicted of operating a motor vehicle in
19 violation of subdivision two or three or paragraph (b) of subdivision
20 two-a of section eleven hundred ninety-two of this article while such
21 person has .15 of one per centum or more by weight of alcohol in the
22 person's blood as shown by a chemical analysis of such person's blood,
23 breath, urine or ~~[saliva]~~ oral fluid made pursuant to the provisions of
24 section eleven hundred ninety-four of this article or in violation of
25 paragraph (a) of subdivision two-a of section eleven hundred ninety-two
26 of this article.

27 (c) Mandatory assessment; procedure. The assessment ordered by a court
28 pursuant to this section shall be performed by an alcohol or substance
29 abuse professional or a licensed agency which shall forward the results,
30 in writing, to the court and to the defendant or ~~[his or her]~~ their
31 counsel within thirty days of the date of such order.

32 § 12. Paragraph (b) of subdivision 1 of section 1242-a of the vehicle
33 and traffic law, as added by section 9 of part XX of chapter 58 of the
34 laws of 2020, is amended to read as follows:

35 (b) Operating a bicycle with electric assist while intoxicated; per
36 se. No person shall operate a bicycle with electric assist while such
37 person has .08 of one per centum or more by weight of alcohol in the
38 person's blood as shown by chemical analysis of such person's blood,
39 breath, urine or ~~[saliva]~~ oral fluid, made pursuant to the provisions of
40 subdivision five of this section.

41 § 13. Paragraph (b) of subdivision 4 of section 1242-a of the vehicle
42 and traffic law, as added by section 9 of part XX of chapter 58 of the
43 laws of 2020, is amended to read as follows:

44 (b) Field testing. Every person operating a bicycle with electric
45 assist which has been involved in an accident shall, at the request of a
46 police officer, submit to a breath test or oral fluid test to be admin-
47 istered by the police officer. If such test indicates that such operator
48 has consumed alcohol or a drug or drugs, the police officer may request
49 such operator to submit to a chemical test or an evaluation conducted by
50 a certified drug recognition expert in the manner set forth in subdivi-
51 sion five of this section.

52 § 14. Subdivision 5 of section 1242-a of the vehicle and traffic law,
53 as added by section 9 of part XX of chapter 58 of the laws of 2020, is
54 amended to read as follows:

55 5. Chemical tests and drug recognition evaluations; when authorized. A
56 police officer may request any person who operates a bicycle with elec-

1 tric assist in this state to consent to a chemical test or an evaluation
2 conducted by a certified drug recognition expert of one or more of the
3 following: breath, blood, urine, or [~~saliva~~] oral fluid, for the purpose
4 of determining the alcoholic and/or drug content of such person's blood,
5 provided that such test is administered at the direction of a police
6 officer with respect to a chemical test of breath, urine or [~~saliva~~]
7 oral fluid or, with respect to a chemical test of blood, at the direc-
8 tion of a police officer: (a) having reasonable grounds to believe such
9 person to have been operating in violation of paragraph (a), (b), (c),
10 (d) or (e) of subdivision one of this section and within two hours after
11 such person has been placed under arrest for any such violation; or (b)
12 within two hours after a breath test or oral fluid test, as provided in
13 paragraph (b) of subdivision four of this section, indicates that alco-
14 hol [~~has~~] or a drug or drugs have been consumed by such person and in
15 accordance with the rules and regulations established by the police
16 force of which the officer is a member.

17 § 15. Subparagraph (i) of paragraph (a) and paragraph (c) of subdivi-
18 sion 6 of section 1242-a of the vehicle and traffic law, as added by
19 section 9 of part XX of chapter 58 of the laws of 2020, are amended to
20 read as follows:

21 (i) At the request of a police officer, the following persons may
22 withdraw blood for the purpose of determining the alcoholic or drug
23 content therein: (A) a physician, a registered professional nurse, a
24 registered physician assistant, a certified nurse practitioner, or an
25 advanced emergency medical technician as certified by the department of
26 health; or (B) under the supervision and at the direction of a physi-
27 cian, registered physician assistant or certified nurse practitioner
28 acting within [~~his or her~~] their lawful scope of practice, or upon the
29 express consent of the person eighteen years of age or older from whom
30 such blood is to be withdrawn: a clinical laboratory technician or clin-
31 ical laboratory technologist licensed pursuant to article one hundred
32 sixty-five of the education law; a phlebotomist; or a medical laboratory
33 technician or medical technologist employed by a clinical laboratory
34 approved under title five of article five of the public health law. This
35 limitation shall not apply to the taking of a urine, [~~saliva~~] oral fluid
36 or breath specimen.

37 (c) Rules and regulations. The department of health shall issue and
38 file rules and regulations approving satisfactory techniques or methods
39 of conducting chemical analyses of a person's blood, urine, breath or
40 [~~saliva~~] oral fluid and to ascertain the qualifications and competence
41 of individuals to conduct and supervise chemical analyses of a person's
42 blood, urine, breath or [~~saliva~~] oral fluid. If the analyses were made
43 by an individual possessing a permit issued by the department of health,
44 this shall be presumptive evidence that the examination was properly
45 given. The provisions of this paragraph do not prohibit the introduction
46 as evidence of an analysis made by an individual other than a person
47 possessing a permit issued by the department of health.

48 § 16. Subdivision 7 of section 1242-a of the vehicle and traffic law,
49 as added by section 9 of part XX of chapter 58 of the laws of 2020, is
50 amended to read as follows:

51 7. Chemical test and drug recognition evaluation evidence. (a) Admis-
52 sibility. Upon the trial of any such action or proceeding arising out of
53 actions alleged to have been committed by any person arrested for a
54 violation of any paragraph of subdivision one of this section, the court
55 shall admit evidence of the amount of alcohol or drugs in the defend-
56 ant's blood as shown by a test administered or evaluation conducted by a

1 certified drug recognition expert pursuant to the provisions of subdivi-
2 sion five of this section.

3 (b) Probative value. The following effect shall be given to evidence
4 of blood-alcohol content, as determined by such tests, of a person
5 arrested for a violation of subdivision one of this section:

6 (i) evidence that there was .05 of one per centum or less by weight of
7 alcohol in such person's blood shall be prima facie evidence that the
8 ability of such person to operate a bicycle with electric assist was not
9 impaired by the consumption of alcohol, and that such person was not in
10 an intoxicated condition;

11 (ii) evidence that there was more than .05 of one per centum but less
12 than .07 of one per centum by weight of alcohol in such person's blood
13 shall be prima facie evidence that such person was not in an intoxicated
14 condition, but such evidence shall be relevant evidence, but shall not
15 be given prima facie effect, in determining whether the ability of such
16 person to operate a bicycle with electric assist was impaired by the
17 consumption of alcohol; and

18 (iii) evidence that there was .07 of one per centum or more but less
19 than .08 of one per centum by weight of alcohol in such person's blood
20 shall be prima facie evidence that such person was not in an intoxicated
21 condition, but such evidence shall be given prima facie effect in deter-
22 mining whether the ability of such person to operate a bicycle with
23 electric assist was impaired by the consumption of alcohol.

24 § 17. Paragraph (b) of subdivision 1 of section 1289 of the vehicle
25 and traffic law, as added by section 10 of part XX of chapter 58 of the
26 laws of 2020, is amended to read as follows:

27 (b) Operating an electric scooter while intoxicated; per se. No person
28 shall operate an electric scooter while such person has .08 of one per
29 centum or more by weight of alcohol in the person's blood as shown by
30 chemical analysis of such person's blood, breath, urine or [~~saliva~~] oral
31 fluid, made pursuant to the provisions of subdivision five of this
32 section.

33 § 18. Paragraph (b) of subdivision 4 of section 1289 of the vehicle
34 and traffic law, as added by section 10 of part XX of chapter 58 of the
35 laws of 2020, is amended to read as follows:

36 (b) Field testing. Every person operating an electric scooter which
37 has been involved in an accident shall, at the request of a police offi-
38 cer, submit to a breath test or oral fluid test to be administered by
39 the police officer. If such test indicates that such operator has
40 consumed alcohol or a drug or drugs, the police officer may request such
41 operator to submit to a chemical test or an evaluation conducted by a
42 certified drug recognition expert in the manner set forth in subdivision
43 five of this section.

44 § 19. Subdivision 5 of section 1289 of the vehicle and traffic law,
45 as added by section 10 of part XX of chapter 58 of the laws of 2020, is
46 amended to read as follows:

47 5. Chemical tests and drug recognition evaluations; when authorized. A
48 police officer may request any person who operates an electric scooter
49 in this state to consent to a chemical test or an evaluation conducted
50 by a certified drug recognition expert of one or more of the following:
51 breath, blood, urine, or [~~saliva~~] oral fluid, for the purpose of deter-
52 mining the alcoholic and/or drug content of such person's blood,
53 provided that such test is administered at the direction of a police
54 officer with respect to a chemical test of breath, urine or [~~saliva~~]
55 oral fluid or, with respect to a chemical test of blood, at the direc-
56 tion of a police officer: (a) having reasonable grounds to believe such

1 person to have been operating in violation of paragraph (a), (b), (c),
2 (d) or (e) of subdivision one of this section and within two hours after
3 such person has been placed under arrest for any such violation; or (b)
4 within two hours after a breath test or oral fluid test, as provided in
5 paragraph (b) of subdivision four of this section, indicates that alco-
6 hol ~~[has]~~ or a drug or drugs have been consumed by such person and in
7 accordance with the rules and regulations established by the police
8 force of which the officer is a member.

9 § 20. Subparagraph (i) of paragraph (a) and paragraph (c) of subdivi-
10 sion 6 of section 1289 of the vehicle and traffic law, as added by
11 section 10 of part XX of chapter 58 of the laws of 2020, is amended to
12 read as follows:

13 (i) At the request of a police officer, the following persons may
14 withdraw blood for the purpose of determining the alcoholic or drug
15 content therein: (A) a physician, a registered professional nurse, a
16 registered physician assistant, a certified nurse practitioner, or an
17 advanced emergency medical technician as certified by the department of
18 health; or (B) under the supervision and at the direction of a physi-
19 cian, registered physician assistant or certified nurse practitioner
20 acting within ~~[his or her]~~ their lawful scope of practice, or upon the
21 express consent of the person eighteen years of age or older from whom
22 such blood is to be withdrawn: a clinical laboratory technician or clin-
23 ical laboratory technologist licensed pursuant to article one hundred
24 sixty-five of the education law; a phlebotomist; or a medical laboratory
25 technician or medical technologist employed by a clinical laboratory
26 approved under title five of article five of the public health law. This
27 limitation shall not apply to the taking of a urine, ~~[saliva]~~ oral fluid
28 or breath specimen.

29 (c) Rules and regulations. The department of health shall issue and
30 file rules and regulations approving satisfactory techniques or methods
31 of conducting chemical analyses of a person's blood, urine, breath or
32 ~~[saliva]~~ oral fluid and to ascertain the qualifications and competence
33 of individuals to conduct and supervise chemical analyses of a person's
34 blood, urine, breath or ~~[saliva]~~ oral fluid. If the analyses were made
35 by an individual possessing a permit issued by the department of health,
36 this shall be presumptive evidence that the examination was properly
37 given. The provisions of this paragraph do not prohibit the introduction
38 as evidence of an analysis made by an individual other than a person
39 possessing a permit issued by the department of health.

40 § 21. Subdivision 7 of section 1289 of the vehicle and traffic law, as
41 added by section 10 of part XX of chapter 58 of the laws of 2020, is
42 amended to read as follows:

43 7. Chemical test and drug recognition evaluation evidence. (a) Admis-
44 sibility. Upon the trial of any such action or proceeding arising out of
45 actions alleged to have been committed by any person arrested for a
46 violation of any paragraph of subdivision one of this section, the court
47 shall admit evidence of the amount of alcohol or drugs in the defend-
48 ant's blood as shown by a test administered or evaluation conducted by a
49 certified drug recognition expert pursuant to the provisions of subdivi-
50 sion five of this section.

51 (b) Probative value. The following effect shall be given to evidence
52 of blood-alcohol content, as determined by such tests, of a person
53 arrested for a violation of subdivision one of this section:

54 (i) evidence that there was .05 of one per centum or less by weight of
55 alcohol in such person's blood shall be prima facie evidence that the
56 ability of such person to operate an electric scooter was not impaired

1 by the consumption of alcohol, and that such person was not in an intoxic-
2 icated condition;

3 (ii) evidence that there was more than .05 of one per centum but less
4 than .07 of one per centum by weight of alcohol in such person's blood
5 shall be prima facie evidence that such person was not in an intoxicated
6 condition, but such evidence shall be relevant evidence, but shall not
7 be given prima facie effect, in determining whether the ability of such
8 person to operate an electric scooter was impaired by the consumption of
9 alcohol; and

10 (iii) evidence that there was .07 of one per centum or more but less
11 than .08 of one per centum by weight of alcohol in such person's blood
12 shall be prima facie evidence that such person was not in an intoxicated
13 condition, but such evidence shall be given prima facie effect in deter-
14 mining whether the ability of such person to operate an electric scooter
15 was impaired by the consumption of alcohol.

16 § 22. Paragraph (s) of subdivision 1 of section 245.20 of the criminal
17 procedure law, as added by section 2 of part LLL of chapter 59 of the
18 laws of 2019, is amended to read as follows:

19 (s) In any prosecution alleging a violation of the vehicle and traffic
20 law, where the defendant is charged by indictment, superior court infor-
21 mation, prosecutor's information, information, or simplified informa-
22 tion, all records of calibration, certification, inspection, repair or
23 maintenance of machines and instruments utilized to perform any scien-
24 tific tests, evaluations and experiments, including but not limited to
25 any test of a person's breath, blood, urine or [~~saliva~~] oral fluid, for
26 the period of six months prior and six months after such test, evalu-
27 ation or experiment was conducted, including the records of gas chroma-
28 tography related to the certification of all reference standards and the
29 certification certificate, if any, held by the operator of the machine
30 or instrument. The time period required by subdivision one of section
31 245.10 of this article shall not apply to the disclosure of records
32 created six months after a test, evaluation or experiment was conducted,
33 but such disclosure shall be made as soon as practicable and in any
34 event, the earlier of fifteen days following receipt, or fifteen days
35 before the first scheduled trial date.

36 § 23. Subdivision 2 of section 11-1201 of the environmental conserva-
37 tion law, as amended by chapter 388 of the laws of 2019, is amended to
38 read as follows:

39 2. "Intoxicated condition" shall mean the presence of .08 of one per
40 centum or more by weight of alcohol in a person's blood as shown by
41 chemical analyses of [~~his~~] such person's blood, breath, urine, or [~~saliva~~]
42 oral fluid made pursuant to section 11-1205 of this title. An
43 "impaired condition" shall mean a state of impairment of a person's
44 capacity to think or act correctly, or of a loss, even in part of a
45 person's control of [~~his~~] their physical or mental faculties due to
46 [~~his~~] their consumption of alcohol or use of a drug.

47 § 24. Subdivisions 2, 3, 4, 5 and 6 of section 11-1205 of the environ-
48 mental conservation law, as added by chapter 726 of the laws of 1977,
49 subdivisions 3, 4 and 5 as amended by section 29 of part R of chapter 58
50 of the laws of 2013, are amended to read as follows:

51 2. Any person engaged in hunting in this state shall be deemed to have
52 given [~~his~~] their consent to a chemical test or an evaluation conducted
53 by a certified drug recognition expert of [~~his~~] such person's breath,
54 blood, urine, or [~~saliva~~] oral fluid for the purpose of determining the
55 alcoholic or drug content of [~~his~~] such person's blood, provided that
56 such test or evaluation is administered at the direction of a police

1 officer or officer of the department of environmental conservation: (a)
2 having reasonable grounds to believe such person to have been engaged in
3 hunting in violation of any subdivision of section 11-1203 of this
4 title, and within two hours after such person has been placed under
5 arrest for any such violation, or (b) within two hours after a breath
6 test or oral fluid test, administered pursuant to the provisions of
7 subdivision one of this section, indicates that [~~alcohol~~~~-has~~] alcohol
8 or a drug or drugs have been consumed by such person, and in accordance
9 with the rules and regulations established by the law enforcement unit
10 of which the administering officer is a member.

11 3. If such person, having been placed under arrest or after a breath
12 test or oral fluid test indicates the presence of alcohol or a drug or
13 drugs in [~~his~~] such person's system and having thereafter been requested
14 to submit to a chemical test or an evaluation conducted by a certified
15 drug recognition expert, refuses to submit to such chemical test or
16 evaluation, the test or evaluation shall not be given, and a report of
17 such refusal shall be forwarded by the officer under whose direction the
18 test was requested to the department of environmental conservation with-
19 in seventy-two hours and the department shall revoke all licenses,
20 bowhunting privileges, muzzle-loading privileges, and permits to hunt
21 which such person may possess; provided, however, that such revocation
22 shall become effective only after a hearing held by the department upon
23 notice to such person, unless such hearing is waived by such person.

24 4. A license, bowhunting privilege, muzzle-loading privilege, or
25 permit to hunt may, upon the basis of a report, verified as hereinafter
26 provided, of the administering officer that [~~he~~] they had reasonable
27 grounds to believe such person to have been engaged in conduct in
28 violation of any subdivision of section 11-1203 of this title and that
29 said person had refused to submit to such test or evaluation, be tempo-
30 rarily suspended without notice pending the determination upon any such
31 hearing. Such report may be verified by having the report sworn to, or
32 by affixing to such report a form notice that false statements made
33 therein are punishable as a class A misdemeanor pursuant to section
34 210.45 of the penal law and such form notice together with the signature
35 of the deponent shall constitute a verification of the report.

36 5. No license, bowhunting privilege, muzzle-loading privilege, or
37 permit to hunt shall be revoked because of a refusal to submit to such
38 chemical test or evaluation conducted by a certified drug recognition
39 expert if the hearing officer is satisfied that the person requested to
40 submit to such chemical test or evaluation had not been warned prior to
41 such refusal to the effect that a refusal to submit to such chemical
42 test or evaluation may result in the revocation of such license,
43 bowhunting privilege, muzzle-loading privilege, or permit to hunt wheth-
44 er or not [~~he is~~] they are found guilty of the charge for which [~~he has~~]
45 they have been arrested.

46 6. The department of health shall issue and file rules and regulations
47 approving satisfactory techniques or methods, to ascertain the quali-
48 fications and competence of individuals to conduct and supervise chemi-
49 cal analyses of a person's blood, urine, breath or [~~saliva~~] oral fluid.
50 If the analyses were made by an individual possessing a permit issued by
51 the department of health, this shall be presumptive evidence that the
52 examination was properly given. The provisions of this subdivision do
53 not prohibit the introduction as evidence of an analysis made by an
54 individual other than a person possessing a permit issued by the depart-
55 ment of health.

§ 25. Paragraphs (b) and (c) of subdivision 2 of section 49-a of the navigation law, as amended by chapter 151 of the laws of 2006, are amended to read as follows:

(b) No such person shall operate a vessel other than a public vessel while ~~[he has]~~ they have .08 of one per centum or more by weight of alcohol in ~~[his]~~ such person's blood, breath, urine, or ~~[saliva]~~ oral fluid, as determined by the chemical test or evaluation conducted by a certified drug recognition expert made pursuant to the provisions of subdivision seven of this section.

(c) No such person shall operate a public vessel while ~~[he has]~~ they have .04 of one per centum or more by weight of alcohol in ~~[his]~~ such person's blood, breath, urine, or ~~[saliva]~~ oral fluid, as determined by the chemical test or evaluation conducted by a certified drug recognition expert made pursuant to the provisions of subdivision seven of this section.

§ 26. Paragraph (b) of subdivision 6 of section 49-a of the navigation law, as added by chapter 805 of the laws of 1992, is amended to read as follows:

(b) Breath test or oral fluid test for operators of vessel. Every person operating a vessel on the waters of the state which has been involved in an accident or which is operated in violation of any of the provisions of this section which regulate the manner in which a vessel is to be properly operated while underway shall, at the request of a police officer, submit to a breath test or oral fluid test to be administered by the police officer. If such test indicates that such operator has consumed alcohol or a drug or drugs, the police officer may request such operator to submit to a chemical test or evaluation conducted by a certified drug recognition expert in the manner set forth in subdivision seven of this section. For the purposes of this section, a vessel is being "operated" only when such vessel is underway and is being propelled in whole or in part by mechanical power.

§ 27. Subdivisions 7, 8, 9 and 10 of section 49-a of the navigation law, as added by chapter 805 of the laws of 1992, paragraph (a) of subdivision 7 as amended by chapter 688 of the laws of 2022, subparagraph 1 of paragraph (d) of subdivision 7 as amended by chapter 391 of the laws of 1998, subparagraph 2 of paragraph (d) of subdivision 7 as amended by chapter 309 of the laws of 1996, and subparagraphs 2 and 3 of paragraph (b) of subdivision 10 as amended by chapter 458 of the laws of 2003, are amended to read as follows:

7. Chemical tests and certified drug recognition evaluations. (a) Any person who operates a vessel on the waters of the state shall be requested to consent to a chemical test or an evaluation conducted by a certified drug recognition expert of one or more of the following: breath, blood, urine, or ~~[saliva]~~ oral fluid for the purpose of determining the alcoholic or drug content of ~~[his]~~ such person's blood, provided that such test or evaluation is administered at the direction of a police officer: (1) having reasonable cause to believe such person to have been operating in violation of this subdivision or paragraph (a), (b), (c), (d), (e) or (e-1) of subdivision two of this section and within two hours after such person has been placed under arrest for any such violation or (2) within two hours after a breath test or oral fluid test as provided in paragraph (b) of subdivision six of this section indicates that alcohol ~~[has]~~ or a drug or drugs have been consumed by such person and in accordance with the rules and regulations established by the police force of which the officer is a member.

(b) If such person having been placed under arrest or after a breath test or oral fluid test indicates the presence of alcohol or a drug or drugs in the person's system and having thereafter been requested to submit to such chemical test or evaluation conducted by a certified drug recognition expert and having been informed that the person's privilege to operate a vessel shall be immediately suspended for refusal to submit to such chemical test or evaluation or any portion thereof, whether or not the person is found guilty of the charge for which such person is arrested, refuses to submit to such chemical test or evaluation or any portion thereof, unless a court order has been granted pursuant to subdivision eight of this section, the test or evaluation shall not be given and a written report of such refusal shall be immediately made by the police officer before whom such refusal was made. Such report may be verified by having the report sworn to, or by affixing to such report a form notice that false statements made therein are punishable as a class A misdemeanor pursuant to section 210.45 of the penal law and such form notice together with the subscription of the deponent shall constitute a verification of the report. The report of the police officer shall set forth reasonable grounds to believe such arrested person to have been operating a vessel in violation of any paragraph of subdivision two of this section, that said person had refused to submit to such chemical test or evaluation, and that no chemical test was administered or evaluation conducted pursuant to the requirements of subdivision eight of this section. The report shall be presented to the court upon the arraignment of the arrested person. The privilege to operate a vessel shall, upon the basis of such written report, be temporarily suspended by the court without notice pending the determination of a hearing as provided herein. Copies of such report must be transmitted by the court to the commissioner of parks, recreation and historic preservation and the commissioner of motor vehicles and such transmittal may not be waived even with the consent of all the parties. Such report shall be forwarded to each commissioner within forty-eight hours of such arraignment. The court shall provide such person with a hearing date schedule, a waiver form, and such other information as may be required by the commissioner of motor vehicles. If a hearing, as provided for in paragraph (c) of this subdivision, is waived by such person, the commissioner of motor vehicles shall immediately suspend the privilege to operate a vessel, as of the date of receipt of such waiver in accordance with the provisions of paragraph (d) of this subdivision.

(c) Any person whose privilege to operate a vessel has been suspended pursuant to paragraph (b) of this subdivision is entitled to a hearing in accordance with a hearing schedule to be promulgated by the commissioner of motor vehicles. If the department fails to provide for such hearing fifteen days after the date of the arraignment of the arrested person, the privilege to operate a vessel of such person shall be reinstated pending a hearing pursuant to this section. The hearing shall be limited to the following issues: (1) did the police officer have reasonable cause to believe that such person had been operating a vessel in violation of any paragraph of subdivision two of this section; (2) did the police officer make a lawful arrest of such person; (3) was such person given sufficient warning, in clear or unequivocal language, prior to such refusal that such refusal to submit to such chemical test or evaluation or any portion thereof, would result in the immediate suspension of such person's privilege to operate a vessel whether or not such person is found guilty of the charge for which the arrest was made; and (4) did such person refuse to submit to such chemical test or evaluation

1 or any portion thereof. If, after such hearing, the hearing officer,
2 acting on behalf of the commissioner of motor vehicles, finds on any one
3 of said issues in the negative, the hearing officer shall immediately
4 terminate any suspension arising from such refusal. If, after such hear-
5 ing, the hearing officer, acting on behalf of the commissioner of motor
6 vehicles finds all of the issues in the affirmative, such officer shall
7 immediately suspend the privilege to operate a vessel in accordance with
8 the provisions of paragraph (d) of this subdivision. A person who has
9 had the privilege to operate a vessel suspended pursuant to this subdivi-
10 sion may appeal the findings of the hearing officer in accordance with
11 the provisions of article three-A of the vehicle and traffic law. Any
12 person may waive the right to a hearing under this section. Failure by
13 such person to appear for the scheduled hearing shall constitute a waiv-
14 er of such hearing, provided, however, that such person may petition the
15 commissioner of motor vehicles for a new hearing which shall be held as
16 soon as practicable.

17 (d) (1) Any privilege to operate a vessel which has been suspended
18 pursuant to paragraph (c) of this subdivision shall not be restored for
19 six months after such suspension. However, no such privilege shall be
20 restored for at least one year after such suspension in any case where
21 the person was under the age of twenty-one at the time of the offense,
22 has had a prior suspension resulting from refusal to submit to a chemi-
23 cal test or an evaluation conducted by a certified drug recognition
24 expert pursuant to this subdivision or subdivision six of section
25 forty-nine-b of this article, or has been convicted of a violation of
26 any paragraph of subdivision two of this section not arising out of the
27 same incident, within the five years immediately preceding the date of
28 such suspension; provided, however, a prior finding that a person under
29 the age of twenty-one has refused to submit to a chemical test or an
30 evaluation conducted by a certified drug recognition expert pursuant to
31 such subdivision six of section forty-nine-b of this article shall have
32 the same effect as a prior finding of a refusal pursuant to this subdivi-
33 sion solely for the purpose of determining the length of any suspen-
34 sion required to be imposed under any provision of this article,
35 provided that the subsequent offense or refusal is committed or occurred
36 prior to the expiration of the retention period for such prior refusal
37 as set forth in paragraph (k) of subdivision one of section two hundred
38 one of the vehicle and traffic law. Notwithstanding any provision of
39 this paragraph to the contrary, any privilege to operate a vessel which
40 has been suspended pursuant to paragraph (c) of this subdivision, where
41 the person was under the age of twenty-one at the time of the refusal,
42 and such person under the age of twenty-one has a prior finding,
43 conviction or youthful offender adjudication resulting from a violation
44 of this section or section forty-nine-b of this article, not arising
45 from the same incident, shall not be restored for at least one year or
46 until such person reaches the age of twenty-one years, whichever is the
47 greater period of time.

48 (2) Any person whose privilege to operate a vessel is suspended pursu-
49 ant to the provisions of this subdivision shall also be liable for a
50 civil penalty in the amount of two hundred dollars except that if such
51 suspension is a second or subsequent suspension pursuant to this subdivi-
52 sion issued within a five year period, or such person has been
53 convicted of a violation of any paragraph of subdivision two of this
54 section within the past five years not arising out of the same incident,
55 the civil penalty shall be in the amount of five hundred dollars. The
56 privilege to operate a vessel shall not be restored to such person

1 unless such penalty has been paid. The first one hundred dollars of each
2 penalty collected by the department of motor vehicles pursuant to the
3 provisions of this subdivision shall be paid to the commissioner of
4 motor vehicles for deposit to the general fund and the remainder of all
5 such penalties shall be paid to the commissioner of parks, recreation
6 and historic preservation for deposit in the "I Love NY Waterways" boat-
7 ing safety fund established pursuant to section ninety-seven-nn of the
8 state finance law.

9 (e) The commissioner of motor vehicles in consultation with the
10 commissioner of parks, recreation and historic preservation shall
11 promulgate such rules and regulations as may be necessary to effectuate
12 the provisions of this subdivision.

13 (f) Evidence of a refusal to submit to such chemical test or an evalu-
14 ation conducted by a certified drug recognition expert shall be admissi-
15 ble in any trial, proceeding or hearing based upon a violation of the
16 provisions of this section, but only upon a showing that the person was
17 given sufficient warning, in clear and unequivocal language, of the
18 effect of such refusal and that the person persisted in [~~his or her~~]
19 their refusal.

20 (g) Upon the request of the person tested or evaluated, the results of
21 such test or evaluation shall be made available to [~~him or her~~] such
22 person.

23 8. Compulsory chemical tests and certified drug recognition evalu-
24 ations. (a) Notwithstanding the provisions of subdivision seven of this
25 section, no person who operates a vessel in the waters of this state may
26 refuse to submit to a chemical test or an evaluation conducted by a
27 certified drug recognition expert of one or more of the following:
28 breath, blood, urine or [~~saliva~~] oral fluid, for the purpose of deter-
29 mining the alcoholic and/or drug content of the blood when a court order
30 for such chemical test or evaluation has been issued in accordance with
31 the provisions of this subdivision.

32 (b) Upon refusal by any person to submit to a chemical test or evalu-
33 ation or any portion thereof as described in paragraph (a) of this
34 subdivision, the test or evaluation shall not be given unless a police
35 officer or a district attorney, as defined in subdivision thirty-two of
36 section 1.20 of the criminal procedure law, requests and obtains a court
37 order to compel a person to submit to a chemical test or evaluation to
38 determine the alcoholic or drug content of the person's blood or oral
39 fluid upon a finding of reasonable cause to believe that:

40 (1) such person was the operator of a vessel and in the course of such
41 operation a person other than the operator was killed or suffered seri-
42 ous physical injury as defined in section 10.00 of the penal law; and

43 (2) (i) either such person operated the vessel in violation of any
44 paragraph of subdivision two of this section, or

45 (ii) a breath test or oral fluid test administered by a police officer
46 in accordance with subdivision six of this section indicates that alco-
47 hol [~~has~~] or a drug or drugs have been consumed by such person; and

48 (3) such person has been placed under lawful arrest; and

49 (4) such person has refused to submit to a chemical test or an evalu-
50 ation conducted by a certified drug recognition expert or any portion
51 thereof, requested in accordance with the provisions of subdivision
52 seven of this section or is unable to give consent to such a test or
53 evaluation.

54 (c) For the purpose of this subdivision "reasonable cause" shall be
55 determined by viewing the totality of circumstances surrounding the
56 incident which, when taken together, indicate that the operator was

1 operating a vessel in violation of any paragraph of subdivision two of
2 this section. Such circumstances may include, but are not limited to:
3 evidence that the operator was operating a vessel in violation of any
4 provision of this chapter which regulates the manner in which a vessel
5 is to be properly operated while underway at the time of the incident;
6 any visible indication of alcohol or drug consumption or impairment by
7 the operator; any other evidence surrounding the circumstances of the
8 incident which indicates that the operator has been operating a vessel
9 while impaired by the consumption of alcohol or drugs or was intoxicated
10 at the time of the incident.

11 (d) (1) An application for a court order to compel submission to a
12 chemical test or an evaluation conducted by a certified drug recognition
13 expert or any portion thereof, may be made to any supreme court justice,
14 county court judge or district court judge in the judicial district in
15 which the incident occurred, or if the incident occurred in the city of
16 New York before any supreme court justice or judge of the criminal court
17 of the city of New York. Such application may be communicated by tele-
18 phone, radio or other means of electronic communication, or in person.

19 (2) The applicant must provide identification by name and title and
20 must state the purpose of the communication. Upon being advised that an
21 application for a court order to compel submission to a chemical test or
22 an evaluation conducted by a certified drug recognition expert is being
23 made, the court shall place under oath the applicant and any other
24 person providing information in support of the application as provided
25 in subparagraph three of this paragraph. After being sworn the applicant
26 must state that the person from whom the chemical test or evaluation was
27 requested was the operator of a vessel and in the course of such opera-
28 tion a person, other than the operator, has been killed or seriously
29 injured and, based upon the totality of circumstances, there is reason-
30 able cause to believe that such person was operating a vessel in
31 violation of any paragraph of subdivision two of this section and, after
32 being placed under lawful arrest such person refused to submit to a
33 chemical test or evaluation or any portion thereof, in accordance with
34 the provisions of this section or is unable to give consent to such a
35 test or evaluation or any portion thereof. The applicant must make
36 specific allegations of fact to support such statement. Any other person
37 properly identified, may present sworn allegations of fact in support of
38 the applicant's statement.

39 (3) Upon being advised that an oral application for a court order to
40 compel a person to submit to a chemical test or an evaluation conducted
41 by a certified drug recognition expert is being made, a judge or justice
42 shall place under oath the applicant and any other person providing
43 information in support of the application. Such oath or oaths and all of
44 the remaining communication must be recorded, either by means of a voice
45 recording device or verbatim stenographic or verbatim longhand notes. If
46 a voice recording device is used or a stenographic record made, the
47 judge must have the record transcribed, certify to the accuracy of the
48 transcription and file the original record and transcription with the
49 court within seventy-two hours of the issuance of the court order. If
50 the longhand notes are taken, the judge shall subscribe a copy and file
51 it with the court within twenty-four hours of the issuance of the order.

52 (4) If the court is satisfied that the requirements for the issuance
53 of a court order pursuant to the provisions of paragraph (b) of this
54 subdivision have been met, it may grant the application and issue an
55 order requiring the accused to submit to a chemical test or an evalu-
56 ation conducted by a certified drug recognition expert to determine the

1 alcoholic and/or drug content of ~~[his]~~ such person's blood and ordering
2 the withdrawal of a blood sample in accordance with the provisions of
3 subdivision nine of this section. When a judge or justice determines to
4 issue an order to compel submission to a chemical test or an evaluation
5 conducted by a certified drug recognition expert based on an oral appli-
6 cation, the applicant therefor shall prepare the order in accordance
7 with the instructions of the judge or justice. In all cases the order
8 shall include the name of the issuing judge or justice, the name of the
9 applicant, and the date and time it was issued. It must be signed by the
10 judge or justice if issued in person, or by the applicant if issued
11 orally.

12 (5) Any false statement by an applicant or any other person in support
13 of an application for a court order shall subject such person to the
14 offenses for perjury set forth in article two hundred ten of the penal
15 law.

16 (e) An order issued pursuant to the provisions of this subdivision
17 shall require that a chemical test or an evaluation conducted by a
18 certified drug recognition expert to determine the alcoholic and/or drug
19 content of the operator's blood must be administered. The provisions of
20 paragraphs (a), (b) and (c) of subdivision nine of this section shall be
21 applicable to any chemical test or evaluation administered pursuant to
22 this section.

23 (f) A defendant who has been compelled to submit to a chemical test or
24 an evaluation conducted by a certified drug recognition expert pursuant
25 to the provisions of this subdivision may move for the suppression of
26 such evidence in accordance with article seven hundred ten of the crimi-
27 nal procedure law on the grounds that the order was obtained and the
28 test administered or evaluation conducted in violation of the provisions
29 of this subdivision or any other applicable law.

30 9. Testing procedures. (a) At the request of a police officer, the
31 following persons may withdraw blood for the purpose of determining the
32 alcohol or drug content therein: (1) a physician, a registered profes-
33 sional nurse or a registered physician's assistant; or (2) under the
34 supervision and at the direction of a physician: a medical laboratory
35 technician or medical technologist as classified by civil service; a
36 phlebotomist; an advanced emergency medical technician as certified by
37 the department of health, or a medical laboratory technician or medical
38 technologist employed by a clinical laboratory approved under title five
39 of article five of the public health law. This limitation shall not
40 apply to the taking of a urine, ~~[saliva]~~ oral fluid or breath specimen.

41 (b) No person entitled to withdraw blood pursuant to paragraph (a) of
42 this subdivision or hospital employing such person and no other employer
43 of such person shall be sued or held liable for any act done or omitted
44 in the course of withdrawing blood at the request of a police officer or
45 peace officer acting pursuant to ~~[his]~~ such officer's special duties
46 pursuant to this subdivision.

47 (c) Any person who may have a cause of action arising from the with-
48 drawal of blood as aforesaid, for which no personal liability exists
49 under paragraph (b) of this subdivision, may maintain such action
50 against the state if the person entitled to withdraw blood pursuant to
51 paragraph (a) of this subdivision acted at the request of a police offi-
52 cer or peace officer acting pursuant to ~~[his]~~ such officer's special
53 duties, employed by the state, or against the appropriate political
54 subdivision of the state if the person acted at the request of a police
55 officer or peace officer acting pursuant to ~~[his]~~ such officer's special
56 duties, employed by a political subdivision of the state. No action

1 shall be maintained pursuant to this paragraph unless notice of claim is
2 duly filed or served in compliance with law.

3 (d) Notwithstanding the foregoing provisions of this subdivision, an
4 action may be maintained by the state or a political subdivision thereof
5 against a person entitled to withdraw blood pursuant to paragraph (a) of
6 this subdivision or hospital employing such person for whose act or
7 omission the state or the political subdivision has been held liable
8 under this subdivision to recover damages, not exceeding the amount
9 awarded to the claimant, that may have been sustained by the state or
10 the political subdivision by reason of gross negligence on the part of
11 such person entitled to withdraw blood.

12 (e) The testimony of any person, other than a physician, entitled to
13 draw blood pursuant to paragraph (a) of this subdivision in respect to
14 any such withdrawal of blood made by [~~him~~] such person may be received
15 in evidence with the same weight, force and effect as if such withdrawal
16 of blood were made by a physician.

17 (f) The provisions of paragraphs (b), (c) and (d) of this subdivision
18 shall also apply with regard to any person employed by a hospital as
19 security personnel for any act done or omitted in the course of with-
20 drawing blood at the request of a police officer pursuant to a court
21 order in accordance with this subdivision.

22 (g) The person tested shall be permitted to choose a physician to
23 administer a chemical test in addition to the one administered at the
24 direction of the police officer.

25 10. Chemical test and drug recognition evaluation evidence. (a) Upon
26 the trial of any such action or proceeding arising out of actions
27 alleged to have been committed by any person arrested for a violation of
28 any paragraph of subdivision two of this section, the court shall admit
29 evidence of the amount of alcohol or drugs in the defendant's blood as
30 shown by a test administered or evaluation conducted pursuant to the
31 provisions of subdivision seven or eight of this section.

32 (b) The following effect shall be given to evidence of blood alcohol
33 content, as determined by such tests, of a person arrested for a
34 violation of any paragraph of subdivision two of this section and who
35 was operating a vessel other than a public vessel:

36 (1) evidence that there was .05 of one per centum or less by weight of
37 alcohol in such person's blood shall be prima facie evidence that the
38 ability of such person to operate a vessel was not impaired by the
39 consumption of alcohol, and that such person was not in an intoxicated
40 condition.

41 (2) evidence that there was more than .05 of one per centum but less
42 than .07 of one per centum of weight in such person's blood shall be
43 prima facie evidence that such person was not in an intoxicated condi-
44 tion, but such evidence shall be relevant evidence but not be given
45 prima facie effect, in determining whether the ability of such person to
46 operate a vessel was impaired by the consumption of alcohol.

47 (3) evidence that there was .07 of one per centum or more but less
48 than .08 of one per centum by weight of alcohol in [~~his~~] such person's
49 blood shall be prima facie evidence that such person was not in an
50 intoxicated condition, but such evidence shall be given prima facie
51 effect in determining whether the ability of such person to operate a
52 vessel was impaired by the consumption of alcohol.

53 (c) Evidence of a refusal to submit to a chemical test or an evalu-
54 ation conducted by a certified drug recognition expert or any portion
55 thereof shall be admissible in any trial or hearing provided the request

1 to submit to such a test or evaluation was made in accordance with the
2 provisions of subdivision seven of this section.

3 § 28. Subdivision 1, paragraph (a) of subdivision 3, and paragraph
4 (a) of subdivision 4 of section 49-b of the navigation law, as added by
5 chapter 391 of the laws of 1998, are amended to read as follows:

6 1. Prohibition. No person under the age of twenty-one shall operate a
7 vessel upon the waters of this state after having consumed alcohol as
8 defined in this section. For purposes of this section, a person under
9 the age of twenty-one is deemed to have consumed alcohol only if such
10 person has .02 of one per centum or more but not more than .07 of one
11 per centum by weight of alcohol in the person's blood, as shown by chem-
12 ical analysis of such person's blood, breath, urine or [~~saliva~~] oral
13 fluid, made in accordance with the provisions of subdivision four of
14 section eleven hundred ninety-four of the vehicle and traffic law. Any
15 person who operates a vessel in violation of this section, and who is
16 not charged with a violation of subdivision two of section forty-nine-a
17 of this article arising out of the same incident shall be referred to
18 the department of motor vehicles for action in accordance with the
19 provisions of this section. Notwithstanding any provision of law to the
20 contrary, a finding that a person under the age of twenty-one operated a
21 vessel after having consumed alcohol in violation of this section is not
22 a judgment of conviction for a crime or any other offense.

23 (a) Any person under the age of twenty-one who operates a vessel on
24 the waters of the state shall be requested to consent to a chemical test
25 of one or more of the following: breath, blood, urine, or [~~saliva~~] oral
26 fluid for the purpose of determining the alcoholic or drug content of
27 [~~his~~] such person's blood, provided that such test is administered at
28 the direction of a police officer: (1) having reasonable grounds to
29 believe such person to have been operating in violation of this section
30 or paragraph (a), (b), (c), (d) or (e) of subdivision two of section
31 forty-nine-a of this article and within two hours after such person has
32 been placed under arrest, or detained pursuant to paragraph (c) of this
33 subdivision, for any such violation or (2) within two hours after a
34 breath test as provided in subdivision two of this section indicates
35 that alcohol has been consumed by such person and in accordance with the
36 rules and regulations established by the police force of which the offi-
37 cer is a member.

38 (a) Whenever a chemical test of the breath, blood, urine or [~~saliva~~]
39 oral fluid of an operator who is under the age of twenty-one indicates
40 that such person has operated a vessel in violation of this section, and
41 such person is not charged with violating any subdivision of section
42 forty-nine-a of this article arising out of the same incident, the
43 police officer who administered the test shall forward a report of the
44 results of such test to the department of motor vehicles within twenty-
45 four hours of the time when such results are available in a manner
46 prescribed by the commissioner of motor vehicles, and the operator shall
47 be given a hearing notice as provided in subdivision five of this
48 section, to appear before a hearing officer in the county where the
49 chemical test was administered, or in an adjoining county under such
50 circumstances as prescribed by the commissioner of motor vehicles, on a
51 date to be established in accordance with a schedule promulgated by the
52 commissioner of motor vehicles. Such hearing shall occur within thirty
53 days of, but not less than forty-eight hours from, the date that the
54 chemical test was administered, provided, however, where the commission-
55 er of motor vehicles determines, based upon the availability of hearing
56 officers and the anticipated volume of hearings at a particular

1 location, that the scheduling of such hearing within thirty days would
2 impair the timely scheduling or conducting of other hearings, such hear-
3 ing shall be scheduled at the next hearing date for such particular
4 location. When providing the operator with such hearing notice, the
5 police officer shall also give to the operator, and shall, prior to the
6 commencement of the hearing, provide to the department of motor vehi-
7 cles, copies of the following reports, documents and materials: any
8 written report or document, or portion thereof, concerning a physical
9 examination, a scientific test or experiment, including the most recent
10 record of inspection, or calibration or repair of machines or instru-
11 ments utilized to perform such scientific tests or experiments and the
12 certification certificate, if any, held by the operator of the machine
13 or instrument, which tests or examinations were made by or at the
14 request or direction of a public servant engaged in law enforcement
15 activity. The report of the police officer shall be verified by having
16 the report sworn to, or by affixing to such report a form notice that
17 false statements made therein are punishable as a class A misdemeanor
18 pursuant to section 210.45 of the penal law and such form notice togeth-
19 er with the subscription of the deponent shall constitute verification
20 of the report.

21 § 29. Paragraph (b) of subdivision 1 of section 25.24 of the parks,
22 recreation and historic preservation law, as amended by chapter 311 of
23 the laws of 2007, is amended to read as follows:

24 (b) No such person shall operate a snowmobile upon a street, highway,
25 public trails, lands, bodies of water, or private property of another
26 while [~~he or she has~~] they have .08 of one per centum or more by weight
27 of alcohol in [~~his or her~~] such person's blood, breath, urine, or [~~saliva~~]
28 oral fluid, as determined by the chemical test or evaluation
29 conducted by a certified drug recognition expert made pursuant to the
30 provisions of subdivision six of this section.

31 § 30. Subdivisions 5, 6, 7, 8 and 9 of section 25.24 of the parks,
32 recreation and historic preservation law, as added by chapter 629 of the
33 laws of 1998, paragraph (b) of subdivision 5, paragraph (a) of subdivi-
34 sion 6 and paragraph (a) of subdivision 7 as amended by chapter 311 of
35 the laws of 2007, and subparagraphs 2 and 3 of paragraph (b) of subdivi-
36 sion 9 as amended by chapter 683 of the laws of 2003, are amended to
37 read as follows:

38 5. Arrest and testing. (a) Arrest. Notwithstanding the provisions of
39 section 140.10 of the criminal procedure law, a police officer may,
40 without a warrant, arrest a person, in case of a violation of any para-
41 graph of subdivision one of this section, if such violation is coupled
42 with an accident or collision in which such person is involved, which in
43 fact had been committed, though not in the police officer's presence,
44 when [~~he or she has~~] they have reasonable cause to believe that the
45 violation was committed by such person. For the purposes of this subdivi-
46 sion police officer shall also include a peace officer authorized to
47 enforce the provisions of this chapter when the alleged violation
48 constitutes a crime.

49 (b) Breath test or oral fluid test for operators of a snowmobile.
50 Every person operating a snowmobile upon a street, highway, public
51 trails, lands, bodies of water, or private property of another which has
52 been involved in an accident or which is operated in violation of any of
53 the provisions of this chapter which regulate the manner in which a
54 snowmobile is to be properly operated shall, at the request of a police
55 officer, submit to a breath test or oral fluid test to be administered
56 by the police officer. If such test indicates that such operator has

consumed alcohol or a drug or drugs, the police officer may request such operator to submit to a chemical test or an evaluation conducted by a certified drug recognition expert in the manner set forth in subdivision six of this section.

6. Chemical tests and drug recognition evaluations. (a) Any person who operates a snowmobile upon a street, highway, public trails, lands, bodies of water, or private property of another shall be requested to consent to a chemical test or an evaluation conducted by a certified drug recognition expert of one or more of the following: breath, blood, urine or ~~[saliva]~~ oral fluid for the purpose of determining the alcoholic or drug content of ~~[his or her]~~ such person's blood, provided that such test or evaluation is administered at the direction of a police officer: (1) having reasonable cause to believe such person to have been operating in violation of this subdivision or paragraph (a), (b), (c), or (d) of subdivision one of this section and within two hours after such person has been placed under arrest for any such violation or (2) within two hours after a breath test as provided in paragraph (b) of subdivision five of this section indicates that alcohol has been consumed by such person and in accordance with the rules and regulations established by the police force of which the officer is a member.

(b) If such person having been placed under arrest or after a breath test or oral fluid test indicates the presence of alcohol or a drug or drugs in the person's system and having thereafter been requested to submit to such chemical test or evaluation and having been informed that the person's privilege to operate a snowmobile shall be immediately suspended for refusal to submit to such chemical test or evaluation or any portion thereof, whether or not the person is found guilty of the charge for which such person is arrested, refuses to submit to such chemical test or evaluation or any portion thereof, unless a court order has been granted pursuant to subdivision seven of this section, the test or evaluation shall not be given and a written report of such refusal shall be immediately made by the police officer before whom such refusal was made. Such report may be verified by having the report sworn to, or by affixing to such report a form notice that false statements made therein are punishable as a class A misdemeanor pursuant to section 210.45 of the penal law and such form notice together with the subscription of the deponent shall constitute a verification of the report. The report of the police officer shall set forth reasonable grounds to believe such arrested person to have been operating a snowmobile in violation of any paragraph of subdivision one of this section, that such person had refused to submit to such chemical test or evaluation, and that no chemical test was administered or evaluation conducted pursuant to the requirements of subdivision seven of this section. The report shall be presented to the court upon the arraignment of the arrested person. The privilege to operate a snowmobile shall, upon the basis of such written report, be temporarily suspended by the court without notice pending the determination of a hearing as provided herein. Copies of such report must be transmitted by the court to the commissioner and the commissioner of motor vehicles and such transmittal may not be waived even with the consent of all the parties. Such report shall be forwarded to the commissioner and the commissioner of motor vehicles within forty-eight hours of such arraignment. The court shall provide such person with a hearing date schedule, a waiver form, and such other information as may be required by the commissioner of motor vehicles. If a hearing, as provided for in paragraph (c) of this subdivision, is waived by such person, the commissioner of motor vehicles

1 shall immediately suspend the privilege to operate a snowmobile, as of
2 the date of receipt of such waiver in accordance with the provisions of
3 paragraph (d) of this subdivision.

4 (c) Any person whose privilege to operate a snowmobile has been
5 suspended pursuant to paragraph (b) of this subdivision is entitled to a
6 hearing in accordance with a hearing schedule to be promulgated by the
7 commissioner of motor vehicles. If the department of motor vehicles
8 fails to provide for such hearing fifteen days after the date of the
9 arraignment of the arrested person, the privilege to operate a snowmo-
10 bile of such person shall be reinstated pending a hearing pursuant to
11 this section. The hearing shall be limited to the following issues: (1)
12 did the police officer have reasonable cause to believe that such person
13 had been operating a snowmobile in violation of any paragraph of subdivi-
14 sion one of this section; (2) did the police officer make a lawful
15 arrest of such person; (3) was such person given sufficient warning, in
16 clear and unequivocal language, prior to such refusal that such refusal
17 to submit to such chemical test or evaluation or any portion thereof,
18 would result in the immediate suspension of such person's privilege to
19 operate a snowmobile whether or not such person is found guilty of the
20 charge for which the arrest was made; and (4) did such person refuse to
21 submit to such chemical test or evaluation or any portion thereof. If,
22 after such hearing, the hearing officer, acting on behalf of the commis-
23 sioner of motor vehicles, finds on any one of said issues in the nega-
24 tive, the hearing officer shall immediately terminate any suspension
25 arising from such refusal. If, after such hearing, the hearing officer,
26 acting on behalf of the commissioner of motor vehicles finds all of the
27 issues in the affirmative, such officer shall immediately suspend the
28 privilege to operate a snowmobile in accordance with the provisions of
29 paragraph (d) of this subdivision. A person who has had the privilege to
30 operate a snowmobile suspended pursuant to this subdivision may appeal
31 the findings of the hearing officer in accordance with the provisions of
32 article three-A of the vehicle and traffic law. Any person may waive the
33 right to a hearing under this section. Failure by such person to appear
34 for the scheduled hearing shall constitute a waiver of such hearing,
35 provided, however, that such person may petition the commissioner of
36 motor vehicles for a new hearing which shall be held as soon as practi-
37 cable.

38 (d) (1) Any privilege to operate a snowmobile which has been suspended
39 pursuant to paragraph (c) of this subdivision shall not be restored for
40 six months after such suspension. However, no such privilege shall be
41 restored for at least one year after such suspension in any case where
42 the person has had a prior suspension resulting from refusal to submit
43 to a chemical test or evaluation pursuant to this subdivision, or has
44 been convicted of a violation of any paragraph of subdivision one of
45 this section not arising out of the same incident, within the five years
46 immediately preceding the date of such suspension.

47 (2) Any person whose privilege to operate a snowmobile is suspended
48 pursuant to the provisions of this subdivision shall also be liable for
49 a civil penalty in the amount of two hundred dollars except that if such
50 suspension is a second or subsequent suspension pursuant to this subdivi-
51 sion issued within a five year period, or such person has been
52 convicted of a violation of any paragraph of subdivision one of this
53 section within the past five years not arising out of the same incident,
54 the civil penalty shall be in the amount of five hundred dollars. The
55 privilege to operate a snowmobile shall not be restored to such person
56 unless such penalty has been paid. The first one hundred dollars of each

1 penalty collected by the department of motor vehicles pursuant to the
2 provisions of this subdivision shall be paid to the commissioner of
3 motor vehicles for deposit to the general fund and the remainder of all
4 such penalties shall be paid to the commissioner for deposit in the
5 snowmobile trail development and maintenance fund established pursuant
6 to section ninety-two-n of the state finance law.

7 (e) The commissioner of motor vehicles in consultation with the
8 commissioner shall promulgate such rules and regulations as may be
9 necessary to effectuate the provisions of this subdivision.

10 (f) Evidence of a refusal to submit to such chemical test or evalu-
11 ation shall be admissible in any trial, proceeding or hearing based upon
12 a violation of the provisions of this section, but only upon a showing
13 that the person was given sufficient warning, in clear and unequivocal
14 language, of the effect of such refusal and that the person persisted in
15 [~~his or her~~] their refusal.

16 (g) Upon the request of the person tested or evaluated, the results of
17 such test or evaluation shall be made available to [~~him or her~~] such
18 person.

19 7. Compulsory chemical tests and drug recognition evaluations. (a)
20 Notwithstanding the provisions of subdivision six of this section, no
21 person who operates a snowmobile upon a street, highway, public trails,
22 lands, bodies of water, or private property of another may refuse to
23 submit to a chemical test of one or more of the following: breath,
24 blood, urine or [~~saliva~~] oral fluid, or an evaluation conducted by a
25 certified drug recognition expert, for the purpose of determining the
26 alcoholic and/or drug content of the blood when a court order for such
27 chemical test or evaluation has been issued in accordance with the
28 provisions of this subdivision.

29 (b) Upon refusal by any person to submit to a chemical test or evalu-
30 ation or any portion thereof as described in paragraph (a) of this
31 subdivision, the test or evaluation shall not be given unless a police
32 officer or a district attorney, as defined in subdivision thirty-two of
33 section 1.20 of the criminal procedure law, requests and obtains a court
34 order to compel a person to submit to a chemical test or an evaluation
35 conducted by a certified drug recognition expert to determine the alco-
36 holic or drug content of the person's blood upon a finding of reasonable
37 cause to believe that:

38 (1) such person was the operator of a snowmobile and in the course of
39 such operation a person other than the operator was killed or suffered
40 serious physical injury as defined in section 10.00 of the penal law;
41 and

42 (2) (i) either such person operated the snowmobile in violation of any
43 paragraph of subdivision one of this section, or

44 (ii) a breath test or oral fluid test administered by a police officer
45 in accordance with subdivision five of this section indicates that alco-
46 hol [~~has~~] or a drug or drugs have been consumed by such person; and

47 (3) such person has been placed under lawful arrest; and

48 (4) such person has refused to submit to a chemical test or evaluation
49 or any portion thereof, requested in accordance with the provisions of
50 subdivision six of this section or is unable to give consent to such a
51 test.

52 (c) For the purpose of this subdivision "reasonable cause" shall be
53 determined by viewing the totality of circumstances surrounding the
54 incident which, when taken together, indicate that the operator was
55 operating a snowmobile in violation of any paragraph of subdivision one
56 of this section. Such circumstances may include, but are not limited to:

1 evidence that the operator was operating a snowmobile in violation of
2 any provision of this chapter which regulates the manner in which a
3 snowmobile is to be properly operated at the time of the incident; any
4 visible indication of alcohol or drug consumption or impairment by the
5 operator; any other evidence surrounding the circumstances of the inci-
6 dent which indicates that the operator has been operating a snowmobile
7 while impaired by the consumption of alcohol or drugs or was intoxicated
8 at the time of the incident.

9 (d) (1) An application for a court order to compel submission to a
10 chemical test or an evaluation conducted by a certified drug recognition
11 expert or any portion thereof, may be made to any supreme court justice,
12 county court judge or district court judge in the judicial district in
13 which the incident occurred, or if the incident occurred in the city of
14 New York before any supreme court justice or judge of the criminal court
15 of the city of New York. Such application may be communicated by tele-
16 phone, radio or other means of electronic communication, or in person.

17 (2) The applicant must provide identification by name and title and
18 must state the purpose of the communication. Upon being advised that an
19 application for a court order to compel submission to a chemical test or
20 an evaluation conducted by a certified drug recognition expert is being
21 made, the court shall place under oath the applicant and any other
22 person providing information in support of the application as provided
23 in subparagraph three of this paragraph. After being sworn the applicant
24 must state that the person from whom the chemical test or evaluation was
25 requested was the operator of a snowmobile and in the course of such
26 operation a person, other than the operator, has been killed or serious-
27 ly injured and, based upon the totality of circumstances, there is
28 reasonable cause to believe that such person was operating a snowmobile
29 in violation of any paragraph of subdivision one of this section and,
30 after being placed under lawful arrest such person refused to submit to
31 a chemical test or an evaluation conducted by a certified drug recogni-
32 tion expert or any portion thereof, in accordance with the provisions of
33 this section or is unable to give consent to such a test or evaluation
34 or any portion thereof. The applicant must make specific allegations of
35 fact to support such statement. Any other person properly identified may
36 present sworn allegations of fact in support of the applicant's state-
37 ment.

38 (3) Upon being advised that an oral application for a court order to
39 compel a person to submit to a chemical test or an evaluation conducted
40 by a certified drug recognition expert is being made, a judge or justice
41 shall place under oath the applicant and any other person providing
42 information in support of the application. Such oath or oaths and all of
43 the remaining communication must be recorded, either by means of a voice
44 recording device or verbatim stenographic or verbatim longhand notes. If
45 a voice recording device is used or a stenographic record made, the
46 judge must have the record transcribed, certify to the accuracy of the
47 transcription and file the original record and transcription with the
48 court within seventy-two hours of the issuance of the court order. If
49 the longhand notes are taken, the judge shall subscribe a copy and file
50 it with the court within twenty-four hours of the issuance of the order.

51 (4) If the court is satisfied that the requirements for the issuance
52 of a court order pursuant to the provisions of paragraph (b) of this
53 subdivision have been met, it may grant the application and issue an
54 order requiring the accused to submit to a chemical test to determine
55 the alcoholic and/or drug content of [~~his or her~~] such person's blood
56 and ordering the withdrawal of a blood sample in accordance with the

provisions of subdivision eight of this section and/or to submit to an evaluation conducted by a certified drug recognition expert. When a judge or justice determines to issue an order to compel submission to a chemical test or an evaluation conducted by a certified drug recognition expert based on an oral application, the applicant therefor shall prepare the order in accordance with the instructions of the judge or justice. In all cases the order shall include the name of the issuing judge or justice, the name of the applicant, and the date and time it was issued. It must be signed by the judge or justice if issued in person, or by the applicant if issued orally.

(5) Any false statement by an applicant or any other person in support of an application for a court order shall subject such person to the offenses for perjury set forth in article two hundred ten of the penal law.

(e) An order issued pursuant to the provisions of this subdivision shall require that a chemical test or an evaluation conducted by a certified drug recognition expert to determine the alcoholic and/or drug content of the operator's blood must be administered. The provisions of paragraphs (a), (b) and (c) of subdivision eight of this section shall be applicable to any chemical test or evaluation administered pursuant to this section.

(f) A defendant who has been compelled to submit to a chemical test or an evaluation conducted by a certified drug recognition expert pursuant to the provisions of this subdivision may move for the suppression of such evidence in accordance with article seven hundred ten of the criminal procedure law on the grounds that the order was obtained and the test administered or evaluation conducted in violation of the provisions of this subdivision or any other applicable law.

8. Testing procedures. (a) At the request of a police officer, the following persons may withdraw blood for the purpose of determining the alcohol or drug content therein: (1) a physician, a registered professional nurse or a registered physician's assistant; or (2) under the supervision and at the direction of a physician: a medical laboratory technician or medical technologist as classified by civil service; a phlebotomist; an advanced emergency medical technician as certified by the department of health, or a medical laboratory technician or medical technologist employed by a clinical laboratory approved under title five of article five of the public health law. This limitation shall not apply to the taking of a urine, ~~saliva~~ oral fluid or breath specimen.

(b) No person entitled to withdraw blood pursuant to paragraph (a) of this subdivision or hospital employing such person and no other employer of such person shall be sued or held liable for any act done or omitted in the course of withdrawing blood at the request of a police officer or peace officer acting pursuant to ~~[his or her]~~ such officer's special duties pursuant to this subdivision.

(c) Any person who may have a cause of action arising from the withdrawal of blood as aforesaid, for which no personal liability exists under paragraph (b) of this subdivision, may maintain such action against the state if the person entitled to withdraw blood pursuant to paragraph (a) of this subdivision acted at the request of a police officer or peace officer acting pursuant to ~~[his or her]~~ such officer's special duties, employed by the state, or against the appropriate political subdivision of the state if the person acted at the request of a police officer or peace officer acting pursuant to ~~[his or her]~~ such officer's special duties, employed by a political subdivision of the

1 state. No action shall be maintained pursuant to this paragraph unless
2 notice of claim is duly filed or served in compliance with law.

3 (d) Notwithstanding the foregoing provisions of this subdivision, an
4 action may be maintained by the state or a political subdivision thereof
5 against a person entitled to withdraw blood pursuant to paragraph (a) of
6 this subdivision or hospital employing such person for whose act or
7 omission the state or the political subdivision has been held liable
8 under this subdivision to recover damages, not exceeding the amount
9 awarded to the claimant, that may have been sustained by the state or
10 the political subdivision by reason of gross negligence on the part of
11 such person entitled to withdraw blood.

12 (e) The testimony of any person, other than a physician, entitled to
13 draw blood pursuant to paragraph (a) of this subdivision in respect to
14 any such withdrawal of blood made by [~~him or her~~] such person may be
15 received in evidence with the same weight, force and effect as if such
16 withdrawal of blood were made by a physician.

17 (f) The provisions of paragraphs (b), (c) and (d) of this subdivision
18 shall also apply with regard to any person employed by a hospital as
19 security personnel for any act done or omitted in the course of with-
20 drawing blood at the request of a police officer pursuant to a court
21 order in accordance with this subdivision.

22 (g) The person tested shall be permitted to choose a physician to
23 administer a chemical test in addition to the one administered at the
24 direction of the police officer.

25 9. Chemical test and drug recognition evaluation evidence. (a) Upon
26 the trial of any such action or proceeding arising out of actions
27 alleged to have been committed by any person arrested for a violation of
28 any paragraph of subdivision one of this section, the court shall admit
29 evidence of the amount of alcohol or drugs in the defendant's blood as
30 shown by a test administered or evaluation conducted pursuant to the
31 provisions of subdivision six or seven of this section.

32 (b) The following effect shall be given to evidence of blood alcohol
33 content, as determined by such tests, of a person arrested for a
34 violation of any paragraph of subdivision one of this section and who
35 was operating a snowmobile:

36 (1) evidence that there was .05 of one per centum or less by weight of
37 alcohol in such person's blood shall be prima facie evidence that the
38 ability of such person to operate a snowmobile was not impaired by the
39 consumption of alcohol, and that such person was not in an intoxicated
40 condition.

41 (2) evidence that there was more than .05 of one per centum but less
42 than .07 of one per centum of weight in such person's blood shall be
43 prima facie evidence that such person was not in an intoxicated condi-
44 tion, but such evidence shall be relevant evidence but not be given
45 prima facie effect, in determining whether the ability of such person to
46 operate a snowmobile was impaired by the consumption of alcohol.

47 (3) evidence that there was .07 of one per centum or more but less
48 than .08 of one per centum by weight of alcohol in such person's blood
49 shall be prima facie evidence that such person was not in an intoxicated
50 condition, but such evidence shall be given prima facie effect in deter-
51 mining whether the ability of such person to operate a snowmobile was
52 impaired by the consumption of alcohol.

53 (c) Evidence of a refusal to submit to a chemical test or an evalu-
54 ation conducted by a certified drug recognition expert or any portion
55 thereof shall be admissible in any trial or hearing provided the request

1 to submit to such a test or evaluation was made in accordance with the
2 provisions of subdivision six of this section.

3 § 31. Subdivision 1 and paragraph (b) of subdivision 2 of section
4 120.04 of the penal law, as amended by chapter 496 of the laws of 2009,
5 are amended to read as follows:

6 (1) commits such crime while operating a motor vehicle while such
7 person has .18 of one per centum or more by weight of alcohol in such
8 person's blood as shown by chemical analysis of such person's blood,
9 breath, urine or [~~saliva~~] oral fluid made pursuant to the provisions of
10 section eleven hundred ninety-four of the vehicle and traffic law;

11 (b) [~~his or her~~] such person's license or [~~his or her~~] such person's
12 privilege of operating a motor vehicle in the state or [~~his or her~~] such
13 person's privilege of obtaining a license issued by the commissioner of
14 motor vehicles is suspended or revoked and such suspension or revocation
15 is based upon either a refusal to submit to a chemical test or an evalu-
16 ation conducted by a certified drug recognition expert pursuant to
17 section eleven hundred ninety-four of the vehicle and traffic law or
18 following a conviction for a violation of any of the provisions of
19 section eleven hundred ninety-two of the vehicle and traffic law;

20 § 32. Subdivision 1 and paragraph (b) of subdivision 2 of section
21 120.04-a of the penal law, as amended by chapter 496 of the laws of
22 2009, are amended to read as follows:

23 (1) commits such crimes while operating a motor vehicle while such
24 person has .18 of one per centum or more by weight of alcohol in such
25 person's blood as shown by chemical analysis of such person's blood,
26 breath, urine or [~~saliva~~] oral fluid made pursuant to the provisions of
27 section eleven hundred ninety-four of the vehicle and traffic law;

28 (b) [~~his or her~~] such person's license or [~~his or her~~] such person's
29 privilege of operating a motor vehicle in this state or [~~his or her~~]
30 such person's privilege of obtaining a license issued by the commission-
31 er of motor vehicles is suspended or revoked and such suspension or
32 revocation is based upon either a refusal to submit to a chemical test
33 or an evaluation conducted by a certified drug recognition expert pursu-
34 ant to section eleven hundred ninety-four of the vehicle and traffic law
35 or following a conviction for a violation of any of the provisions of
36 section eleven hundred ninety-two of the vehicle and traffic law;

37 § 33. Subdivision 1 and paragraph (b) of subdivision 2 of section
38 125.13 of the penal law, as amended by chapter 496 of the laws of 2009,
39 are amended to read as follows:

40 (1) commits such crime while operating a motor vehicle while such
41 person has .18 of one per centum or more by weight of alcohol in such
42 person's blood as shown by chemical analysis of such person's blood,
43 breath, urine or [~~saliva~~] oral fluid made pursuant to the provisions of
44 section eleven hundred ninety-four of the vehicle and traffic law;

45 (b) [~~his or her~~] such person's license or [~~his or her~~] such person's
46 privilege of operating a motor vehicle in the state or [~~his or her~~] such
47 person's privilege of obtaining a license issued by the commissioner of
48 motor vehicles is suspended or revoked and such suspension or revocation
49 is based upon either a refusal to submit to a chemical test or an evalu-
50 ation conducted by a certified drug recognition expert pursuant to
51 section eleven hundred ninety-four of the vehicle and traffic law or
52 following a conviction for a violation of any of the provisions of
53 section eleven hundred ninety-two of the vehicle and traffic law;

54 § 34. Subdivision 1 and paragraph (b) of subdivision 2 of section
55 125.14 of the penal law, as amended by chapter 496 of the laws of 2009,
56 are amended to read as follows:

(1) commits such crimes while operating a motor vehicle while such person has .18 of one per centum or more by weight of alcohol in such person's blood as shown by chemical analysis of such person's blood, breath, urine or ~~saliva~~ oral fluid made pursuant to the provisions of section eleven hundred ninety-four of the vehicle and traffic law;

(b) ~~his or her~~ such person's license or ~~his or her~~ such person's privilege of operating a motor vehicle in this state or ~~his or her~~ such person's privilege of obtaining a license issued by the commissioner of motor vehicles is suspended or revoked and such suspension or revocation is based upon either a refusal to submit to a chemical test or an evaluation conducted by a certified drug recognition expert pursuant to section eleven hundred ninety-four of the vehicle and traffic law or following a conviction for a violation of any of the provisions of section eleven hundred ninety-two of the vehicle and traffic law;

§ 35. This act shall take effect immediately.